

SENATE BILL No. 867

April 28, 1992, Introduced by Senators DE GROW, SCHWARZ, FAUST, POLLACK and GAST and referred to the Committee on Finance.

A bill to amend sections 2 and 3a 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 205.93a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 3a 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 205.93a 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 con-
20 sumption in this state, irrespective of whether or not he or she
21 is 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.

26 (e) "Purchase" means acquired for a consideration, whether
27 the acquisition was effected by a transfer of title, of

1 possession, or of both, or a license to use or consume; whether
2 the transfer was absolute or conditional, and by whatever means
3 the transfer was effected; and whether consideration is a price
4 or rental in money, or by way of exchange or barter.

5 (f) "Price" means the aggregate value in money of anything
6 paid or delivered, or promised to be paid or delivered, by a con-
7 sumer to a seller in the consummation and complete performance of
8 the transaction by which tangible personal property or services
9 were purchased or rented for storage, use, or other consumption
10 in this state, without a deduction for the cost of the property
11 sold, cost of materials used, labor or service cost, interest or
12 discount paid, or any other expense. The price of tangible per-
13 sonal property, for affixation to real estate, withdrawn by a
14 construction contractor from inventory available for sale to
15 others or made available by publication or price list as a fin-
16 ished product for sale to others is the finished goods inventory
17 value of the property. For contracts entered into after
18 March 31, 1989, if a construction contractor manufactures, fabri-
19 cates, or assembles tangible personal property ~~prior to~~ BEFORE
20 affixing it to real estate, the price of the property ~~shall be~~
21 IS equal to the sum of the materials cost of the property and the
22 cost of labor to manufacture, fabricate, or assemble the property
23 but ~~shall~~ DOES not include the cost of labor to cut, bend,
24 assemble, or attach property at the site of affixation to real
25 estate. For the purposes of the preceding sentence, for property
26 withdrawn by a construction contractor from inventory available
27 for sale to others or made available by publication or price list

1 as a finished product for sale to others, the materials cost of
2 the property means the finished goods inventory value of the
3 property. For purposes of this subdivision, "manufacture" means
4 to convert or condition tangible personal property by changing
5 the form, composition, quality, combination, or character of the
6 property; and "fabricate" means to modify or prepare tangible
7 personal property for affixation or assembly. -Beginning
8 ~~January 1, 1984 and until July 3, 1984, if a purchase is made of~~
9 ~~or a qualified purchase agreement is entered into for the pur-~~
10 ~~chase of a motor vehicle or trailer coach with an exchange of a~~
11 ~~used motor vehicle or a used trailer coach or if a purchase is~~
12 ~~made of or a qualified purchase agreement is entered into for the~~
13 ~~purchase of a titled watercraft with an exchange of a used titled~~
14 ~~watercraft, the price shall be the difference between the agreed~~
15 ~~upon value of the motor vehicle, trailer coach, or titled water-~~
16 ~~craft used as part payment of the purchase price and the full~~
17 ~~retail price of the motor vehicle, trailer coach, or titled~~
18 ~~watercraft being purchased. A qualified purchase agreement means~~
19 ~~a purchase agreement presented to the secretary of state at the~~
20 ~~time the vehicle is registered in this state for a transfer of~~
21 ~~ownership that shall occur on or before February 1, 1985.~~
22 ~~Beginning July 3, 1984, the~~ THE price of a motor vehicle,
23 trailer coach, or titled watercraft ~~shall be~~ IS the full retail
24 price of the motor vehicle, trailer coach, or titled watercraft
25 being purchased. The tax collected by the seller from the con-
26 sumer or lessee under this act shall not be considered as a part
27 of the price, but shall be considered as a tax collection for the

1 benefit of the state, and a person other than the state shall not
2 derive a benefit from the collection or payment of this tax. A
3 price does not include an assessment imposed pursuant to either
4 the convention and tourism marketing act, Act No. 383 of the
5 Public Acts of 1980, being sections 141.881 to 141.889 of the
6 Michigan Compiled Laws, or the community convention ~~and~~ OR
7 tourism marketing act, Act No. 395 of the Public Acts of 1980,
8 being sections 141.871 to 141.880 of the Michigan Compiled Laws,
9 ~~which~~ THAT was added to charges for rooms or lodging otherwise
10 subject, pursuant to section 3a, to tax under this act. PRICE
11 INCLUDES THE AMOUNT PAID FOR THE ACT OR PRIVILEGE OF ORIGINATING
12 OR RECEIVING TELECOMMUNICATIONS IN THIS STATE. Price does not
13 include specific charges for technical support or for adapting or
14 modifying prewritten, standard, or canned computer software pro-
15 grams to a purchaser's needs or equipment if the charges are sep-
16 arately stated and identified. ~~Tax~~ THE TAX imposed pursuant to
17 this act shall not be computed or collected on rental receipts
18 ~~when~~ IF the tangible personal property rented or leased has
19 previously been subjected to a Michigan sales or use tax when
20 purchased by the lessor.

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

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

4 (i) "Department" means the revenue division of the depart-
5 ment of treasury.

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

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

21 (l) "AMOUNT PAID" MEANS THE CHARGE TO THE TAXPAYER'S SERVICE
22 ADDRESS IN THIS STATE REGARDLESS OF WHERE THE PAYMENT IS MADE.

23 (M) "INTERSTATE TELECOMMUNICATIONS" MEANS ALL TELECOMMUNICA-
24 TIONS THAT EITHER ORIGINATE OR TERMINATE OUTSIDE THIS STATE.

25 (N) "INTRASTATE TELECOMMUNICATIONS" MEANS ALL TELECOMMUNICA-
26 TIONS THAT BOTH ORIGINATE AND TERMINATE WITHIN THIS STATE.

1 (O) "TELECOMMUNICATIONS" INCLUDES, BUT IS NOT LIMITED TO,
2 MESSAGES OR INFORMATION TRANSMITTED THROUGH THE USE OF LOCAL,
3 TOLL, AND WIDE AREA TELEPHONE SERVICE; PRIVATE LINE SERVICES;
4 CHANNEL SERVICES; TELEGRAPH SERVICES; TELETYPEWRITER; COMPUTER
5 EXCHANGE SERVICES; CELLULAR MOBILE TELECOMMUNICATIONS SERVICE;
6 SPECIALIZED MOBILE RADIO, STATIONARY 2-WAY RADIO, PAGING SERVICE,
7 OR ANY OTHER FORM OF MOBILE AND PORTABLE 1-WAY OR 2-WAY COMMUNI-
8 CATIONS; OR ANY OTHER TRANSMISSION OF MESSAGES OR INFORMATION BY
9 ELECTRONIC OR SIMILAR MEANS BETWEEN OR AMONG POINTS BY WIRE
10 CABLE, FIBER OPTICS, LASER, MICROWAVE, RADIO, SATELLITE, OR SIMI-
11 LAR FACILITIES. TELECOMMUNICATIONS DOES NOT INCLUDE VALUE ADDED
12 TO SERVICES IN WHICH COMPUTER PROCESSING APPLICATIONS ARE USED TO
13 ACT ON THE FORM, CONTENT, CODE, OR PROTOCOL OF THE INFORMATION
14 FOR PURPOSES OTHER THAN TRANSMISSION. TELECOMMUNICATIONS DOES
15 NOT INCLUDE PURCHASES OF TELECOMMUNICATIONS BY A TELECOMMUNICA-
16 TIONS SERVICE PROVIDER FOR USE AS A COMPONENT PART OF THE SERVICE
17 PROVIDED BY HIM OR HER TO THE ULTIMATE RETAIL CONSUMER WHO ORIGI-
18 NATES OR TERMINATES THE TAXABLE END-TO-END COMMUNICATIONS.
19 TELECOMMUNICATIONS DOES NOT INCLUDE CARRIER ACCESS CHARGES,
20 RIGHT-OF-ACCESS CHARGES, CHARGES FOR USE OF INTERCOMPANY FACILI-
21 TIES, AND ALL TELECOMMUNICATIONS RESOLD IN THE SUBSEQUENT PROVI-
22 SION OF, USED AS A COMPONENT OF, OR INTEGRATED INTO END-TO-END,
23 TELECOMMUNICATIONS SERVICE.

24 Sec. 3a. (1) The use or consumption of the following serv-
25 ices ~~shall be~~ ARE taxed under this act in the same manner as
26 tangible personal property is taxed under this act:

1 (a) Intrastate TELECOMMUNICATIONS. ~~telephone, telegraph,~~
2 ~~leased wire and other similar communications, including local~~
3 ~~telephone exchange and long distance telephone service which both~~
4 ~~originates and terminates in Michigan, and telegraph, private~~
5 ~~line and teletypewriter service between places in Michigan, but~~
6 ~~excluding telephone service by coin-operated installations,~~
7 ~~switchboards, concentrator identifiers, interoffice circuitry and~~
8 ~~their accessories for telephone answering service and directory~~
9 ~~advertising proceeds.~~

10 (B) INTERSTATE TELECOMMUNICATIONS.

11 (C) ~~(b)~~ Rooms or lodging furnished by hotelkeepers, motel
12 operators, and other persons furnishing accommodations that are
13 available to the public ~~—~~ on the basis of a commercial and
14 business enterprise, irrespective of whether or not membership is
15 required for use of the accommodations, except rooms and lodging
16 rented for a continuous period of more than 1 month. As used in
17 this act, "hotel" or "motel" means a building or group of build-
18 ings in which the public may obtain accommodations for a consid-
19 eration, including, without limitation, such establishments as
20 inns, motels, tourist homes, tourist houses or courts, lodging
21 houses, rooming houses, nudist camps, apartment hotels, resort
22 lodges and cabins, camps operated by other than nonprofit organi-
23 zations but not including those licensed under Act No. ~~47~~ 116
24 of the ~~First Extra Session of 1944, as amended, being sections~~
25 ~~722.101 to 722.108 of the Compiled Laws of 1948,~~ PUBLIC ACTS OF
26 1973, BEING SECTIONS 722.111 TO 722.128 OF THE MICHIGAN COMPILED
27 LAWS, and any other building or group of buildings in which

1 accommodations are available to the public, except accommodations
2 rented for a continuous period of more than 1 month and accommo-
3 dations furnished by hospitals or nursing homes.

4 (2) IF A TAXPAYER HAS PAID A TAX ON AN INTERSTATE TELECOM-
5 MUNICATION IN ANOTHER STATE, THE TAXPAYER, UPON PROOF OF PAYMENT
6 OF THE TAX, MAY CLAIM A CREDIT AGAINST THE TAX UNDER THIS ACT IN
7 THE AMOUNT OF THE TAX PAID IN THE OTHER STATE.