

Act No. 326  
Public Acts of 1993  
Approved by the Governor  
December 31, 1993  
Filed with the Secretary of State  
December 31, 1993

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Reps. Oxender, Gnodtke, Munsell, Johnson, Gernaat, Bullard, DeLange, Bender, Horton, Bandstra, Dalman, Llewellyn, Brackenridge, Stille, Middleton, Walberg, Dobb and Martin

# **ENROLLED HOUSE BILL No. 5103**

AN ACT to amend sections 3, 3a, 4, 4f, 6, and 21 of Act No. 94 of the Public Acts of 1937, entitled as amended "An act to provide for the levy, assessment and collection of a specific excise tax on the storage, use or consumption in this state of tangible personal property and certain services; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," section 3 as amended by Act No. 86 of the Public Acts of 1990, section 4 as amended by Act No. 141 of the Public Acts of 1989, sections 4f and 6 as amended by Act No. 17 of the Public Acts of 1993, and section 21 as amended by Act No. 260 of the Public Acts of 1987, being sections 205.93, 205.93a, 205.94, 205.94f, 205.96, and 205.111 of the Michigan Compiled Laws; and to add sections 4e and 4n.

*The People of the State of Michigan enact:*

Section 1. Sections 3, 3a, 4, 4f, 6, and 21 of Act No. 94 of the Public Acts of 1937, section 3 as amended by Act No. 86 of the Public Acts of 1990, section 4 as amended by Act No. 141 of the Public Acts of 1989, sections 4f and 6 as amended by Act No. 17 of the Public Acts of 1993, and section 21 as amended by Act No. 260 of the Public Acts of 1987, being sections 205.93, 205.93a, 205.94, 205.94f, 205.96, and 205.111 of the Michigan Compiled Laws, are amended and sections 4e and 4n are added to read as follows:

Sec. 3. (1) There is levied upon and there shall be collected from every person in this state a specific tax for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property or services specified in section 3a. There shall be added to the tax penalties and interest if applicable as provided in this act. For the purpose of the proper administration of this act and to prevent the evasion of the tax, it is presumed that tangible personal property purchased is subject to the tax if brought into the state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in this state.

(2) The tax imposed by this section for the privilege of using, storing, or consuming a vehicle, ORV, mobile home, aircraft, snowmobile, or watercraft shall be collected before the transfer of the vehicle, ORV, mobile home, aircraft, snowmobile, or watercraft, except a transfer to a licensed dealer or retailer for purposes of resale that arises by reason of a transaction made by a person who does not transfer vehicles, ORV's, mobile homes, aircraft, snowmobiles, or watercraft in the ordinary course of his or her business done in this state. The tax on a vehicle, ORV, snowmobile, and watercraft shall be collected by the secretary of state before the transfer of the vehicle, ORV, snowmobile, or watercraft registration. The tax on a mobile home shall be collected by the department of commerce, mobile home commission, or its agent before the transfer of the certificate of title. The tax on an aircraft shall be collected by the department of treasury. Notwithstanding any limitation contained in section 2, the price tax base of any vehicle, ORV, mobile home, aircraft, snowmobile, or watercraft subject to taxation under this act shall be not less than its retail dollar value at the time of acquisition as fixed pursuant to rules promulgated by the department.

(3) The following transfers or purchases are not subject to use tax:

(a) When the transferee or purchaser is the spouse, mother, father, brother, sister, or child of the transferor.

(b) When the transfer is a gift to a beneficiary in the administration of an estate.

(c) When a vehicle, ORV, mobile home, aircraft, snowmobile, or watercraft that has once been subjected to the Michigan sales or use tax is transferred in connection with the organization, reorganization, dissolution, or partial liquidation of an incorporated or unincorporated business and the beneficial ownership is not changed.

(d) When an insurance company licensed to conduct business in this state acquires ownership of a late model distressed vehicle as defined in section 12a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.12a of the Michigan Compiled Laws, through payment of damages in response to a claim or when the person who owned the vehicle before the insurance company reacquires ownership from the company as part of the settlement of a claim.

(4) The department may utilize the services, information, or records of any other department or agency of the state government in the performance of its duties under this act, and other departments or agencies of the state government are required to furnish those services, information, or records upon the request of the department.

Sec. 3a. The use or consumption of the following services is taxed under this act in the same manner as tangible personal property is taxed under this act:

(a) Intrastate telephone, telegraph, leased wire, and other similar communications, including local telephone exchange and long distance telephone service that both originates and terminates in Michigan, and telegraph, private line, and teletypewriter service between places in Michigan, but excluding telephone service by coin-operated installations, switchboards, concentrator-identifiers, interoffice circuitry and their accessories for telephone answering service, and directory advertising proceeds.

(b) Rooms or lodging furnished by hotelkeepers, motel operators, and other persons furnishing accommodations that are available to the public on the basis of a commercial and business enterprise, irrespective of whether or not membership is required for use of the accommodations, except rooms and lodging rented for a continuous period of more than 1 month. As used in this act, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, nudist camps, apartment hotels, resort lodges and cabins, camps operated by other than nonprofit organizations but not including those licensed under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, and any other building or group of buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than 1 month and accommodations furnished by hospitals or nursing homes.

(c) Interstate telephone communications that either originate or terminate in this state and for which the charge for the service is billed to a Michigan service address or phone number by the provider either within or outside this state including calls between this state and any place within or without the United States of America outside of this state. However, if the tax under this act is levied at a rate of 6%, this subdivision does not apply to a wide area telecommunication service or a similar type service, an 800 prefix service or similar type service, an interstate private network and related usage charges, or an international call either inbound or outbound.

Sec. 4. The tax levied does not apply to the following:

(a) Property sold in this state on which transaction a tax is paid under the general sales tax act, Act No. 167 of the Public Acts of 1933, as amended, being sections 205.51 to 205.78 of the Michigan Compiled Laws, if the tax was due and paid on the retail sale to a consumer.

(b) Property, the storage, use, or other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States, or under the constitution of this state.

(c) Property purchased for resale, demonstration purposes, or lending or leasing to a public or parochial school offering a course in automobile driving except that a vehicle purchased by the school shall be certified for driving education and shall not be reassigned for personal use by the school's administrative personnel. For a dealer selling a new car or truck, exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style according to the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in 1 calendar year for demonstration purposes.

(d) Property that is brought into this state by a nonresident person for storage, use, or consumption while temporarily within this state, except if the property is used in this state in a nontransitory business activity for a period exceeding 15 days.

(e) Property the sale or use of which was already subjected to a sales tax or use tax equal to, or in excess of, that imposed by this act under the law of any other state or a local governmental unit within a state if the tax was due and paid on the retail sale to the consumer and the state or local governmental unit within a state in which the tax was imposed accords like or complete exemption on property the sale or use of which was subjected to the sales or use tax of this state. If the sale or use of property was already subjected to a tax under the law of any other state or local governmental unit within a state in an amount less than the tax imposed by this act, this act shall apply, but at a rate measured by the difference between the rate provided in this act and the rate by which the previous tax was computed.

(f) Property sold to a person engaged in a business enterprise and using and consuming the property in the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth. At the time of the transfer of that tangible personal property, the transferee shall sign a statement, in a form approved by the department, stating that the property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise. The statement shall be accepted by the courts as prima facie evidence of the exemption. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land used in the production of agricultural products as a business enterprise and includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption does not include transfers of food, fuel, clothing, or similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed and becoming a structural part of real estate.

(g) Property sold to the following:

(i) An industrial processor for use or consumption in industrial processing. Property used or consumed in industrial processing does not include tangible personal property permanently affixed and becoming a structural part of real estate; office furniture, office supplies, and administrative office equipment; or vehicles licensed and titled for use on public highways other than a specially designed vehicle, together with parts, used to mix and agitate materials added at a plant or jobsite in the concrete manufacturing process. Industrial processing does not include receipt and storage of raw materials purchased or extracted by the user or consumer, or the preparation of food and beverages by a retailer for retail sale. As used in this subdivision, "industrial processor" means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail. Sales to a person performing a service who does not act as an industrial processor while performing the service may not be excluded under this subdivision, except as provided in subparagraph (ii).

(ii) A person, whether or not the person is an industrial processor, when the property is a computer used in operating industrial processing equipment; equipment used in a computer assisted manufacturing system; equipment used in a computer assisted design or engineering system integral to an industrial process; or a subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

(h) Property or services sold to the United States, an unincorporated agency or instrumentality of the United States, an incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American red cross and its chapters or branches, this state, a department or institution of this state, or a political subdivision of this state.

(i) Property or services sold to a school, hospital, home for the care and maintenance of children or aged persons, or other health, welfare, educational, cultural arts, charitable, or benevolent institution or agency, operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of this state, if not operated for profit, and if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or a restricted group. The tax levied shall not apply to property or services sold to a parent cooperative preschool. As used in this subdivision, "parent cooperative preschool" means a nonprofit, nondiscriminatory educational institution, maintained as a community service and administered by parents of children currently enrolled in the preschool that provides an educational and developmental program for children younger than compulsory school age, that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel, and that is licensed by the department of social services pursuant to Act No. 116 of the Public Acts of 1973, as amended, being sections 722.111 to 722.128 of the Michigan Compiled Laws.

(j) Property or services sold to a regularly organized church or house of religious worship except:

(i) Sales in which the property is used in activities that are mainly commercial enterprises.

(ii) Sales of vehicles licensed for use on the public highways other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of persons for religious purposes.

(k) A vessel designed for commercial use of registered tonnage of 500 tons or more, if produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of a vessel of 500 tons or more engaged in interstate commerce.

(l) Property purchased by a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the property is affixed to and made a structural part of the real estate of a nonprofit hospital or a nonprofit housing entity qualified as exempt pursuant to section 15a of the state housing development authority act of 1966, Act No. 346 of the Public Acts of 1966, as amended, being section 125.1415a of the Michigan Compiled Laws. A nonprofit hospital or nonprofit housing includes only the property of a nonprofit hospital or the homes or dwelling places constructed by a nonprofit housing entity, the income or property of which does not directly or indirectly inure to the benefit of an individual, private stockholder, or other private person.

(m) Property purchased for use in this state where actual personal possession is obtained outside this state, the purchase price or actual value of which does not exceed \$10.00 during 1 calendar month.

(n) A newspaper or periodical classified under federal postal laws and regulations effective September 1, 1985 as second class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established at least 2 years, and published at least once a week, and a copyrighted motion picture film. Tangible personal property used or consumed, and not becoming a component part of a copyrighted motion picture film, newspaper or periodical, except that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is subject to tax. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax, includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

(o) Property purchased by persons licensed to operate a commercial radio or television station if the property is used in the origination or integration of the various sources of program material for commercial radio or television transmission. This subdivision does not include a vehicle licensed and titled for use on public highways or property used in the transmitting to or receiving from an artificial satellite.

(p) A person who is a resident of this state who purchases an automobile in another state while in the military service of the United States and who pays a sales tax in the state where the automobile is purchased.

(q) A vehicle for which a special registration is secured in accordance with section 226(12) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being section 257.226 of the Michigan Compiled Laws.

(r) A hearing aid, contact lenses if prescribed for a specific disease which precludes the use of eyeglasses, or any other apparatus, device, or equipment used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life when the tangible personal property is purchased on a written prescription or order issued by a health professional as defined by section 4 of former Act No. 264 of the Public Acts of 1974, or section 21005 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.21005 of the Michigan Compiled Laws, or eyeglasses prescribed or dispensed to correct the person's vision by an ophthalmologist, optometrist, or optician.

(s) Water when delivered through water mains or in bulk tanks in quantities of not less than 500 gallons.

(t) The purchase of machinery and equipment for use or consumption in the rendition of a service, the use or consumption of which is taxable under section 3a(a) except that this exception is limited to the tangible personal property located on the premises of the subscriber and the necessary exchange equipment.

(u) A vehicle not for resale used by a nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

(v) Tangible personal property purchased and installed as a component part of a water pollution control facility for which a tax exemption certificate is issued pursuant to Act No. 222 of the Public Acts of 1966, as amended, being sections 323.351 to 323.358 of the Michigan Compiled Laws, or an air pollution control facility for which a tax exemption certificate is issued pursuant to Act No. 250 of the Public Acts of 1965, as amended, being sections 336.1 to 336.8 of the Michigan Compiled Laws.

(w) Tangible real or personal property donated by a manufacturer, wholesaler, or retailer to an organization or entity exempt pursuant to subdivision (i) or (j) or section 4a(a) or (b) of the general sales tax act, Act No. 167 of the Public Acts of 1933, as amended, being section 205.54a of the Michigan Compiled Laws.

(x) The storage, use, or consumption of any aircraft owned or used by a domestic passenger air carrier operating under a certificate issued by the United States department of transportation pursuant to section 401 of title IV of the federal aviation act of 1958, Public Law 85-726, 49 U.S.C. 1371, if the aircraft is used primarily in the regularly scheduled commercial transport of passengers.

Sec. 4e. The use of tangible personal property purchased by persons engaged in the business of constructing, altering, repairing, or improving real estate for others is exempt from the tax imposed at the additional rate of 2% if the tangible personal property is purchased, manufactured, fabricated, or assembled by those persons and is affixed and made a structural part of real estate or used and completely consumed, in the fulfillment of a single contract that is either a fixed price contract offered before March 15, 1994, accepted before June 15, 1994, and not subject to change or modification or a contract entered into pursuant to the obligation of a formal written bid made before March 15, 1994 and accepted before June 15, 1994 that cannot be altered or withdrawn. The tax imposed at the additional rate of 2% also does not apply to a bona fide sales or lease agreement made before March 15, 1994 if the agreement cannot be withdrawn or altered, or contains a fixed price not subject to change or modification of greater than 15%.

Sec. 4f. (1) In computing the amount of tax payments required for any month of a seller not subject to section 6(2) who collects the tax from the purchaser under the provisions of this act, the seller who collects the tax from a purchaser may deduct the amount provided by subdivision (a) or (b), whichever is greater:

(a) If the tax that accrued to the state from the purchase of tangible personal property or services during the preceding month is remitted to the department on or before the seventh day of the month in which remittance is due, 0.75% of the tax collected at a rate of 4% for the preceding monthly period, but not to exceed \$20,000.00 of the tax collected for that month. If the tax that accrued to the state from the purchase of tangible personal property or services during the preceding month is remitted to the department after the seventh day of the month and on or before the fifteenth day of the month in which remittance is due, 0.50% of the tax collected at a rate of 4% for the preceding monthly period, but not to exceed \$15,000.00 of the tax collected for that month.

(b) The tax collected at a rate of 4% on \$150.00 of taxable purchase price for the preceding monthly period or a prorated portion of \$150.00 of the taxable purchase price for the preceding month if the seller engaged in business for less than a month.

(2) In computing the amount of tax levied under this act for any month, a seller who collects the tax from the purchaser under this act and who is subject to section 6(2) may deduct the amount provided in this subsection. If the tax that is due to the state from the purchase of tangible personal property or services is remitted to the department on or before the eleventh day of the month in which remittance is due, 0.75% of the tax due at a rate of 4% but not to exceed \$20,000.00 of the tax due for that month may be deducted. If the tax that is due to the state from the purchase of tangible personal property or services is remitted to the department after the eleventh day and on or before the eighteenth day of the month in which remittance is due, 0.50% of the tax due at a rate of 4% but not to exceed \$15,000.00 of the tax due for that month may be deducted.

(3) A deduction is not allowed under this section for payments of taxes made to the department after the day the person is required to pay the tax imposed by this act pursuant to section 6.

(4) If, pursuant to section 6(3), the commissioner of revenue prescribes the filing of returns and the payment of the tax for periods in excess of 1 month, a seller who collects the tax from the purchaser is entitled to a deduction from the tax collections remitted to the department for the extended payment period that is equivalent to the deduction allowed under subsection (1) or (2) for monthly periods.

(5) The commissioner may prescribe the filing of estimated returns and annual periodic reconciliations as necessary to carry out the purposes of this section.

Sec. 4n. The consumption of electricity, natural gas, and home heating fuels for residential use is exempt from the use tax at the additional rate of 2% approved by the electors on March 15, 1994.

Sec. 6. (1) Every person storing, using, or consuming tangible personal property or services, the storage, use, or consumption of which is subject to the tax imposed by the act when the tax was not paid to a seller, and every seller collecting the tax from the purchaser, unless otherwise prescribed by the department under the provisions of subsection (2) or (3), on or before the fifteenth day of each calendar month shall file with the department a return for the preceding calendar month in a form prescribed by the department, showing the price of each purchase of tangible personal property or services during the preceding month, and other information the department considers necessary for the proper administration of this act. At the same time each person shall pay to the department the amount of tax imposed by this act with respect to the purchases covered by the return. A return shall be signed by the person liable for the tax or his or her duly authorized agent. If the return is prepared by a person other than the taxpayer, the return shall also be signed by the person and show his or her address.

(2) Each seller that had a total tax liability after subtracting the tax payments made to the secretary of state under this act or the sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws, or after subtracting the tax credits available under section 6a of the general sales tax act, Act No. 167 of the Public Acts of 1933, being section 205.6a of the Michigan Compiled Laws, in the immediately preceding calendar year of \$480,000.00 for 1993, \$660,000.00 for 1994, or \$720,000.00 for each year after 1994, or more on or before the eighteenth of each month shall remit to the department, by an electronic funds transfer method approved by the commissioner of revenue, an amount equal to 95% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 95% of the actual liability for the current month being reported, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month. However, for the period beginning May 1, 1994 through April 30, 1995, the payment required under this subsection shall be 140% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year or 95% of the actual liability for the current month being reported, plus the reconciliation payment described in this subsection.

(3) The commissioner of revenue, if considered necessary to insure payment of the tax or to provide a more efficient administration, may require and prescribe the filing of returns and payment of the tax for other than monthly periods.

(4) If a corporation licensed under this act fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for, making the returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due.

(5) The tax imposed under this act shall accrue to the state on the last day of each calendar month.

Sec. 21. (1) Except as provided in subsection (2), all money received and collected under the provisions of this act shall be deposited by the department, in the state treasury to the credit of the general fund, to be disbursed only by appropriations by the legislature.

(2) The collections from the use tax imposed at the additional rate of 2% approved by the electors March 15, 1994 shall be deposited in the state school aid fund established in section 11 of Article IX of the state constitution of 1963.

Section 2. This amendatory act shall take effect May 1, 1994.

Section 3. Sections 3, 4f, 6, and 21 of Act No. 94 of the Public Acts of 1937, as amended and sections 4e and 4n as added by this amendatory act, shall not take effect unless Senate Joint Resolution S of the 87th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963.

Section 4. This amendatory act shall not take effect unless Senate Joint Resolution S is submitted to the voters and the following bills are enacted into law:

- (a) House Bill No. 5109.
- (b) House Bill No. 5110.
- (c) House Bill No. 5116.
- (d) House Bill No. 5009.
- (e) House Bill No. 5010.
- (f) House Bill No. 5118.
- (g) House Bill No. 5097.
- (h) House Bill No. 5123.
- (i) House Bill No. 4279.
- (j) House Bill No. 5102.
- (k) House Bill No. 5104.
- (l) House Bill No. 5106.
- (m) House Bill No. 5111.
- (n) House Bill No. 5115.
- (o) House Bill No. 5112.
- (p) House Bill No. 5120.
- (q) House Bill No. 5129.
- (r) House Bill No. 5224.

This act is ordered to take immediate effect.

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Co-Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.