



# HOUSE BILL No. 5509

April 27 1994 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

1 profit, company estate trust, receiver, trustee, syndicate the  
2 United States this state county, or any other group or combina-  
3 tion acting as a unit, and the plural as well as the singular  
4 number, unless the intention to give a more limited meaning is  
5 disclosed by the context

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

10 (c) "Storage means ~~a~~ THE keeping or retention OF PROPERTY  
11 in this state for any purpose after losing its interstate  
12 character

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

1 SYSTEMATIC SOLICITATION OF ORDERS FOR TANGIBLE PERSONAL PROPERTY  
2 FOR STORAGE USE, OR CONSUMPTION IN THIS STATE BY MAIL THE  
3 DELIVERY OF A CATALOG THE USE OF A TOLL-FREE TELEPHONE NUMBER  
4 FOR RESIDENTS OF THIS STATE ADVERTISING IN PUBLICATIONS PUB-  
5 LISHED PRIMARILY FOR RESIDENTS OF THIS STATE A SALES OR PROMO-  
6 TIONAL REPRESENTATIVE, AGENT, OR ACTIVITY IN THIS STATE AN ORDER  
7 ACCEPTING PERSON OR FACILITY IN THIS STATE OR A CONTEST OPEN TO  
8 OR AWARDS MADE TO RESIDENTS OF THIS STATE IF THE PERSON BENEFITS  
9 FROM ANY BANKING, FINANCING DEBT COLLECTION, TELECOMMUNICATION,  
10 OR MARKETING ACTIVITIES OCCURRING IN THIS STATE OR BENEFITS FROM  
11 AN AUTHORIZED INSTALLATION, SERVICING, OR REPAIR FACILITY, A  
12 STORAGE OR DISTRIBUTION FACILITY, OR A SALES OUTLET LOCATED IN  
13 THIS STATE

14 (e) "Purchase" means ~~acquired~~ THE ACQUISITION for a con-  
15 sideration, whether the acquisition was effected by a transfer of  
16 title, of possession, or of both, or a license to use or consume  
17 whether the transfer was absolute or conditional, and by whatever  
18 means the transfer was effected and whether consideration is a  
19 price or rental in money or by way of exchange or barter

20 (f) 'Price means the aggregate value in money of anything  
21 paid or delivered, or promised to be paid or delivered, by a con-  
22 sumer to a seller in the consummation and complete performance of  
23 the transaction by which tangible personal property or services  
24 were purchased or rented for storage, use, or other consumption  
25 in this state, without a deduction for the cost of the property  
26 sold, cost of materials used, labor or service cost, interest or  
27 discount paid, or any other expense The price of tangible

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

~~1 purchase of a titled watercraft with an exchange of a used titled~~  
~~2 watercraft, the price shall be the difference between the agreed~~  
~~3 upon value of the motor vehicle trailer coach or titled water-~~  
~~4 craft used as part payment of the purchase price and the full~~  
~~5 retail price of the motor vehicle, trailer coach, or titled~~  
~~6 watercraft being purchased. A qualified purchase agreement means~~  
~~7 a purchase agreement presented to the secretary of state at the~~  
~~8 time the vehicle is registered in this state for a transfer of~~  
~~9 ownership that shall occur on or before February 1, 1985.~~  
~~10 Beginning July 3, 1984, the price of a motor vehicle, trailer~~  
~~11 coach, or titled watercraft shall be the full retail price of the~~  
~~12 motor vehicle, trailer coach, or titled watercraft being~~  
~~13 purchased.~~ The tax collected by the seller from the consumer or  
14 lessee under this act shall not be considered as a part of the  
15 price but shall be considered as a tax collection for the bene-  
16 fit of the state ~~, and a~~ A person other than the state shall  
17 not derive a benefit from the collection or payment of this tax  
18 A price does not include an assessment imposed pursuant to either  
19 the convention and tourism marketing act, Act No 383 of the  
20 Public Acts of 1980, being sections 141 881 to 141 889 of the  
21 Michigan Compiled Laws, or the community convention ~~and~~ OR  
22 tourism marketing act, Act No 395 of the Public Acts of 1980,  
23 being sections 141 871 to 141 880 of the Michigan Compiled Laws,  
24 ~~which~~ THAT was added to charges for rooms or lodging otherwise  
25 subject pursuant to section 3a to tax under this act Price  
26 does not include specific charges for technical support or for  
27 adapting or modifying prewritten, standard or canned computer

1 software programs to a purchaser's needs or equipment if the  
 2 charges are separately stated and identified Tax imposed pursu-  
 3 ant to this act shall not be computed or collected on rental  
 4 receipts ~~when~~ IF the tangible personal property rented or  
 5 leased has previously been subjected to a Michigan sales or use  
 6 tax when purchased by the lessor

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

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

15 (i) Department means the revenue division of the depart-  
 16 ment of treasury

17 (j) Tax includes all taxes, interest, or penalties levied  
 18 under this act

19 (k) 'Tangible personal property' includes ~~beginning~~  
 20 ~~December 28, 1987,~~ computer software offered for general use by  
 21 the public or software modified or adapted to the user's needs or  
 22 equipment by the seller, only if the software is available from a  
 23 seller of software on an as is basis or as an end product without  
 24 modification or adaptation Tangible personal property does not  
 25 include computer software originally designed for the exclusive  
 26 use and special needs of the purchaser As used in this  
 27 subdivision, computer software means a set of statements or

1 instructions that when incorporated in a machine usable medium is  
2 capable of causing a machine or device having information pro-  
3 cessing capabilities to indicate, perform, or achieve a particu-  
4 lar function, task, or result