



HOUSE BILL No. 5661

June 21 1994 Introduced by Reps Profit and Bullard and referred to the Committee on Taxation

A bill to amend sections 2 and 4 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 and section 4 as amended by Act No 34 of the Public Acts of 1994, being sections 205 92 and 205 94 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2 and 4 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 and section 4 as amended by Act No 34 of the Public
4 Acts of 1994, being sections 205 92 and 205 94 of the Michigan
5 Compiled Laws, are amended to read as follows

6 Sec 2 As used in this act

1 (a) Person means an individual, firm, partnership, joint
2 venture, association, social club, fraternal organization,
3 municipal or private corporation whether or not organized for
4 profit, company, estate, trust, receiver, trustee, syndicate, the
5 United States, this state, county, or any other group or combina-
6 tion acting as a unit, and the plural as well as the singular
7 number, unless the intention to give a more limited meaning is
8 disclosed by the context

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

13 (c) "Storage" means a keeping or retention in this state for
14 any purpose after losing its interstate character

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

1 supervisor, or employer as the seller for the purpose of this
2 act

3 (e) "Purchase means ~~acquired~~ THE ACQUISITION for a con-
4 sideration, whether the acquisition ~~was~~ IS effected by a trans-
5 fer of title, of possession, or of both, or a license to use or
6 consume whether the transfer ~~was~~ IS absolute or conditional,
7 and by whatever means the transfer ~~was~~ IS effected and whether
8 consideration is a price or rental in money, or by way of
9 exchange or barter

10 (f) "Price' means the aggregate value in money of anything
11 paid or delivered, or promised to be paid or delivered, by a con-
12 sumer to a seller in the consummation and complete performance of
13 the transaction by which tangible personal property or services
14 ~~were~~ ARE purchased or rented for storage, use, or other con-
15 sumption in this state, without a deduction for the cost of the
16 property sold, cost of materials used, labor or service cost,
17 interest or discount paid, or any other expense The price of
18 tangible personal property, for affixation to real estate, with-
19 drawn by a construction contractor from inventory available for
20 sale to others or made available by publication or price list as
21 a finished product for sale to others is the finished goods
22 inventory value of the property For contracts entered into
23 after March 31, 1989, if a construction contractor manufactures,
24 fabricates, or assembles tangible personal property ~~prior to~~
25 BEFORE affixing it to real estate, the price of the property
26 ~~shall be~~ IS equal to the sum of the materials cost of the
27 property and the cost of labor to manufacture, fabricate, or

1 assemble the property but ~~shall~~ DOES not include the cost of
2 labor to cut bend assemble or attach property at the site of
3 affixation to real estate For the purposes of the preceding
4 sentence, for property withdrawn by a construction contractor
5 from inventory available for sale to others or made available by
6 publication or price list as a finished product for sale to
7 others, the materials cost of the property means the finished
8 goods inventory value of the property For purposes of this sub-
9 division, "manufacture" means to convert or condition tangible
10 personal property by changing the form, composition, quality,
11 combination, or character of the property, — and "fabricate"
12 means to modify or prepare tangible personal property for affixa-
13 tion or assembly ~~Beginning January 1, 1984 and until July 3,~~
14 ~~1984, if a purchase is made of or a qualified purchase agreement~~
15 ~~is entered into for the purchase of a motor vehicle or trailer~~
16 ~~coach with an exchange of a used motor vehicle or a used trailer~~
17 ~~coach or if a purchase is made of or a qualified purchase agree-~~
18 ~~ment is entered into for the purchase of a titled watercraft with~~
19 ~~an exchange of a used titled watercraft, the price shall be the~~
20 ~~difference between the agreed upon value of the motor vehicle,~~
21 ~~trailer coach, or titled watercraft used as part payment of the~~
22 ~~purchase price and the full retail price of the motor vehicle,~~
23 ~~trailer coach, or titled watercraft being purchased~~ A qualified
24 purchase agreement means a purchase agreement presented to the
25 secretary of state at the time the vehicle is registered in this
26 state for a transfer of ownership that shall occur on or before
27 February 1 1985 ~~Beginning July 3, 1984, the~~ THE price of a

1 motor vehicle trailer coach or titled watercraft ~~shall be~~ IS
 2 the full retail price of the motor vehicle, trailer coach, or
 3 titled watercraft being purchased The tax collected by the
 4 seller from the consumer or lessee under this act shall not be
 5 considered as a part of the price, but shall be considered as a
 6 tax collection for the benefit of the state, and a person other
 7 than the state shall not derive a benefit from the collection or
 8 payment of this tax A price does not include an assessment
 9 imposed pursuant to either the convention and tourism marketing
 10 act, Act No 383 of the Public Acts of 1980, being sections
 11 141 881 to 141 889 of the Michigan Compiled Laws, or the commu-
 12 nity convention ~~and~~ OR tourism marketing act, Act No 395 of
 13 the Public Acts of 1980, being sections 141 871 to 141 880 of the
 14 Michigan Compiled Laws, ~~which~~ THAT was added to charges for
 15 rooms or lodging otherwise subject, pursuant to section 3a, to
 16 tax under this act Price does not include specific charges for
 17 technical support or for adapting or modifying prewritten, stan-
 18 dard, or canned computer software programs to a purchaser's needs
 19 or equipment if the charges are separately stated and
 20 identified ~~Tax~~ THE TAX imposed pursuant to this act shall not
 21 be computed or collected on rental receipts ~~when~~ IF the tangi-
 22 ble personal property rented or leased has previously been sub-
 23 jected to a Michigan sales or use tax when purchased by the
 24 lessor /

25 (g) "Consumer means the person who has purchased tangible
 26 personal property or services for storage, use, or other
 27 consumption in this state and includes a person acquiring

1 tangible personal property ~~when~~ IF engaged in the business of
 2 constructing, altering, repairing, or improving the real estate
 3 of others

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

7 (i) "Department" means the revenue division of the depart-
 8 ment of treasury

9 (j) "Tax" includes all taxes, interest, or penalties levied
 10 under this act

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

24 (l) "TANGIBLE PERSONAL PROPERTY" DOES NOT INCLUDE A SERVICE
 25 IMPLEMENT PRODUCED BY A PERSON PROVIDING A SERVICE WHOSE FEE IF
 26 ANY, IS BASED ON THE SERVICE-PROVIDED RATHER THAN A TANGIBLE
 27 PRODUCT OF THAT SERVICE. AS USED IN THIS SUBDIVISION, 'SERVICE

1 IMPLEMENT MEANS A TANGIBLE OBJECT THAT IS UNIQUE, OF NO
 2 INTRINSIC VALUE, OF NO LITERARY OR ARTISTIC VALUE, AND OF NO
 3 VALUE TO ANYONE OTHER THAN THE PERSON WHO COMMISSIONED THE
 4 SERVICE SERVICE IMPLEMENT INCLUDES, BUT IS NOT LIMITED TO, AN
 5 ANNUAL REPORT OR FINANCIAL AUDIT PREPARED BY AN ACCOUNTANT AN
 6 AUDIOTAPE OR VIDEOTAPE MASTER FOR AN ADVERTISEMENT PREPARED BY A
 7 POSTPRODUCTION SERVICE AN ORIGINAL DESIGN OR PLAN PREPARED BY AN
 8 ARCHITECT A WILL, CONTRACT, OR DEED PREPARED BY AN ATTORNEY A
 9 LAYOUT OR ARTWORK FOR AN ADVERTISEMENT PREPARED BY A COMMERCIAL
 10 ARTIST A TAX RETURN PREPARED BY AN INCOME TAX SERVICE A PHOTO-
 11 GRAPH FOR REPRODUCTION IN AN ADVERTISEMENT CREATED BY A PHOTOGRA-
 12 PHER OR AN ELECTROCARDIOGRAM OR PRESCRIPTION ORDERED BY A
 13 PHYSICIAN

14 Sec 4 The tax levied does not apply to the following

15 (a) Property sold in this state on which transaction a tax
 16 is paid under the general sales tax act, Act No 167 of the
 17 Public Acts of 1933 as amended, being sections 205 51 to 205 78
 18 of the Michigan Compiled Laws, if the tax was due and paid on the
 19 retail sale to a consumer

20 (b) Property the storage, use, or other consumption of
 21 which, this state is prohibited from taxing under the constitu-
 22 tion or laws of the United States, or under the constitution of
 23 this state

24 (c) Property purchased for resale, demonstration purposes,
 25 or lending or leasing to a public or parochial school offering a
 26 course in automobile driving except that a vehicle purchased by
 27 the school shall be certified for driving education and shall not

1 be reassigned for personal-use by the school s administrative
 2 personnel For a dealer selling a new car or truck, exemption
 3 for demonstration purposes shall be determined by the number of
 4 new cars and trucks sold during the current calendar year or the
 5 immediately preceding year without regard to specific make or
 6 style according to the following schedule of 0 to 25 2 units 26
 7 to 100, 7 units 101 to 500 20 units 501 or more, 25 units but
 8 not to exceed 25 cars and trucks in 1 calendar year for demon-
 9 stration purposes ~~For tax years beginning after December 31,~~
 10 ~~1987, property~~ PROPERTY purchased for resale includes promo-
 11 tional merchandise transferred ~~pursuant to~~ UNDER a redemption
 12 offer to a person located outside this state

13 (d) Property that is brought into this state by a nonresi-
 14 dent person for storage, use, or consumption while temporarily
 15 within this state, except if the property is used in this state
 16 in a nontransitory business activity for a period exceeding 15
 17 days

18 (e) Property the sale or use of which was already subjected
 19 to a sales tax or use tax equal to, or in excess of that imposed
 20 by this act under the law of any other state or a local govern-
 21 mental unit within a state if the tax was due and paid on the
 22 retail sale to the consumer and the state or local governmental
 23 unit within a state in which the tax was imposed accords like or
 24 complete exemption on property the sale or use of which was sub-
 25 jected to the sales or use tax of this state If the sale or use
 26 of property was already subjected to a tax under the law of any
 27 other state or local governmental unit within a state in an

1 amount less than the tax imposed by this act this act shall
2 apply but at a rate measured by the difference between the rate
3 provided in this act and the rate by which the previous tax was
4 computed

5 (f) Property sold to a person engaged in a business enter-
6 prise and using and consuming the property in the tilling, plant-
7 ing, caring for, or harvesting of the things of the soil or in
8 the breeding, raising, or caring for livestock, poultry, or
9 horticultural products, including transfers of livestock, poul-
10 try, or horticultural products for further growth At the time
11 of the transfer of that tangible personal property, the trans-
12 feree shall sign a statement, in a form approved by the depart-
13 ment, stating that the property is to be used or consumed in con-
14 nection with the production of horticultural or agricultural
15 products as a business enterprise The statement shall be
16 accepted by the courts as prima facie evidence of the exemption
17 This exemption includes agricultural land tile, which means fired
18 clay or perforated plastic tubing used as part of a subsurface
19 drainage system for land used in the production of agricultural
20 products as a business enterprise and includes a portable grain
21 bin, which means a structure that is used or is to be used to
22 shelter grain and that is designed to be disassembled without
23 significant damage to its component parts This exemption does
24 not include transfers of food, fuel, clothing, or similar tangi-
25 ble personal property for personal living or human consumption
26 This exemption does not include tangible personal property

1 permanently affixed and becoming a structural part of real
2 estate

3 (g) Property sold to the following

4 (1) An industrial processor for use or consumption in indus-
5 trial processing Property used or consumed in industrial pro-
6 cessing does not include tangible personal property permanently
7 affixed and becoming a structural part of real estate office
8 furniture, office supplies, and administrative office equipment
9 or vehicles licensed and titled for use on public highways other
10 than a specially designed vehicle, together with parts, used to
11 mix and agitate materials added at a plant or jobsite in the con-
12 crete manufacturing process Industrial processing does not
13 include receipt and storage of raw materials purchased or
14 extracted by the user or consumer, or the preparation of food and
15 beverages by a retailer for retail sale As used in this subdi-
16 vision, 'industrial processor' means a person who transforms
17 alters, or modifies tangible personal property by changing the
18 form composition, or character of the property for ultimate sale
19 at retail or sale to another industrial processor to be further
20 processed for ultimate sale at retail Sales to a person per-
21 forming a service who does not act as an industrial processor
22 while performing the service may not be excluded under this sub-
23 division, except as provided in subparagraph (11)

24 (11) A person, whether or not the person is an industrial
25 processor, when the property is a computer used in operating
26 industrial processing equipment equipment used in a computer
27 assisted manufacturing system equipment used in a computer

1 assisted design or engineering system integral to an industrial
2 process or a subunit or electronic assembly comprising a compo-
3 nent in a computer integrated industrial processing system

4 (h) Property or services sold to the United States, an unin-
5 corporated agency or instrumentality of the United States, an
6 incorporated agency or instrumentality of the United States
7 wholly owned by the United States or by a corporation wholly
8 owned by the United States, the American red cross and its chap-
9 ters or branches, this state, a department or institution of this
10 state, or a political subdivision of this state

11 (i) Property or services sold to a school, hospital, home
12 for the care and maintenance of children or aged persons, or
13 other health, welfare, educational, cultural arts, charitable, or
14 benevolent institution or agency, operated by an entity of gov-
15 ernment, a regularly organized church, religious, or fraternal
16 organization, a veterans organization, or a corporation incorpo-
17 rated under the laws of this state, if not operated for profit,
18 and if the income or benefit from the operation does not inure,
19 in whole or in part to an individual or private shareholder,
20 directly or indirectly, and if the activities of the entity or
21 agency are carried on exclusively for the benefit of the public
22 at large and are not limited to the advantage, interests, and
23 benefits of its members or a restricted group The tax levied
24 shall not apply to property or services sold to a parent coopera-
25 tive preschool As used in this subdivision, 'parent cooperative
26 preschool" means a nonprofit, nondiscriminatory educational
27 institution, maintained as a community service and administered

1 by parents of children currently enrolled in the preschool that
2 provides an educational and developmental program for children
3 younger than compulsory school age, that provides an educational
4 program for parents, including active participation with children
5 in preschool activities, that is directed by qualified preschool
6 personnel, and that is licensed by the department of social serv-
7 ices pursuant to Act No 116 of the Public Acts of 1973, as
8 amended, being sections 722 111 to 722 128 of the Michigan
9 Compiled Laws

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

12 (1) Sales in which the property is used in activities that
13 are mainly commercial enterprises

14 (11) Sales of vehicles licensed for use on the public high-
15 ways other than a passenger van or bus with a manufacturer's
16 rated seating capacity of 10 or more that is used primarily for
17 the transportation of persons for religious purposes

18 (k) A vessel designed for commercial use of registered ton-
19 nage of 500 tons or more if produced upon special order of the
20 purchaser, and bunker and galley fuel, provisions, supplies,
21 maintenance, and repairs for the exclusive use of a vessel of 500
22 tons or more engaged in interstate commerce

23 (l) Property purchased by a person engaged in the business
24 of constructing, altering, repairing, or improving real estate
25 for others to the extent the property is affixed to and made a
26 structural part of the real estate of a nonprofit hospital or a
27 nonprofit housing entity qualified as exempt pursuant to section

1 15a of the state housing development authority act of 1966, Act
2 No 346 of the Public Acts of 1966, as amended, being section
3 125 1415a of the Michigan Compiled Laws A nonprofit hospital or
4 nonprofit housing includes only the property of a nonprofit hos-
5 pital or the homes or dwelling places constructed by a nonprofit
6 housing entity, the income or property of which does not directly
7 or indirectly inure to the benefit of an individual, private
8 stockholder, or other private person

9 (m) Property purchased for use in this state where actual
10 personal possession is obtained outside this state, the purchase
11 price or actual value of which does not exceed \$10 00 during 1
12 calendar month

13 (n) A newspaper or periodical classified under federal
14 postal laws and regulations effective September 1, 1985 as second
15 class mail matter or as a controlled circulation publication or
16 qualified to accept legal notices for publication in this state,
17 as defined by law, or any other newspaper or periodical of gen-
18 eral circulation, established at least 2 years, and published at
19 least once a week, and a copyrighted motion picture film
20 Tangible personal property used or consumed, and not becoming a
21 component part of a copyrighted motion picture film, newspaper or
22 periodical, except that portion or percentage of tangible per-
23 sonal property used or consumed in producing an advertising sup-
24 plement that becomes a component part of a newspaper or periodi-
25 cal is subject to tax For purposes of this subdivision, tangi-
26 ble personal property that becomes a component part of a
27 newspaper or periodical and consequently not subject to tax,

1 includes an advertising supplement inserted into and circulated
2 with a newspaper or periodical that is otherwise exempt from tax
3 under this subdivision if the advertising supplement is deliv-
4 ered directly to the newspaper or periodical by a person other
5 than the advertiser, or the advertising supplement is printed by
6 the newspaper or periodical

7 (o) Property purchased by persons licensed to operate a com-
8 mercial OR EDUCATIONAL radio or television BROADCASTING station
9 if the property is PREDOMINANTLY STORED, used, OR CONSUMED in the
10 origination, ~~or~~ integration, OR BROADCAST of ~~the various~~
11 ~~sources of~~ RADIO OR TELEVISION program material ~~for commercial~~
12 ~~radio or television transmission~~ This subdivision does not
13 ~~include a vehicle licensed and titled for use on public highways~~
14 ~~or property used in the transmitting to or receiving from an~~
15 ~~artificial satellite~~

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

20 (q) A vehicle for which a special registration is secured in
21 accordance with section 226(12) of the Michigan vehicle code, Act
22 No 300 of the Public Acts of 1949, as amended, being section
23 257 226 of the Michigan Compiled Laws

24 (r) A hearing aid, contact lenses if prescribed for a spe-
25 cific disease which precludes the use of eyeglasses, or any other
26 apparatus, device, or equipment used to replace or substitute for
27 any part of the human body, or used to assist the disabled person

1 to lead a reasonably normal life when the tangible personal
2 property is purchased on a written prescription or order issued
3 by a health professional as defined by section 4 of former Act
4 No 264 of the Public Acts of 1974, or section 21005 of the
5 public health code, Act No 368 of the Public Acts of 1978, being
6 section 333 21005 of the Michigan Compiled Laws, or eyeglasses
7 prescribed or dispensed to correct the person's vision by an oph-
8 thalmologist, optometrist, or optician

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

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

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

19 (v) Tangible personal property purchased and installed as a
20 component part of a water pollution control facility for which a
21 tax exemption certificate is issued pursuant to Act No 222 of
22 the Public Acts of 1966, as amended, being sections 323 351 to
23 323 358 of the Michigan Compiled Laws, or an air pollution con-
24 trol facility for which a tax exemption certificate is issued
25 pursuant to Act No 250 of the Public Acts of 1965, as amended,
26 being sections 336 1 to 336 8 of the Michigan Compiled Laws

1 (w) Tangible real or personal property donated by a
2 manufacturer, wholesaler, or retailer to an organization or
3 entity exempt pursuant to subdivision (i) or (j) or section 4a(a)
4 or (b) of ~~the general sales tax act,~~ Act No 167 of the Public
5 Acts of 1933, as amended, being section 205 54a of the Michigan
6 Compiled Laws

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