



HOUSE BILL No. 4164

January 17, 1995, Introduced by Rep. Bryant and referred to the Committee on Tax Policy.

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
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~~ THE keeping or retention OF PROPERTY
10 in this state for any purpose after losing its interstate
11 character.

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

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

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

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

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

1 ~~titled watercraft, the price shall be the difference between the~~
2 ~~agreed upon value of the motor vehicle, trailer, coach, or titled~~
3 ~~watercraft used as part payment of the purchase price and the~~
4 ~~full retail price of the motor vehicle, trailer, coach, or titled~~
5 ~~watercraft being purchased. A qualified purchase agreement means~~
6 ~~a purchase agreement presented to the secretary of state at the~~
7 ~~time the vehicle is registered in this state for a transfer of~~
8 ~~ownership that shall occur on or before February 1, 1985.~~
9 ~~Beginning July 3, 1984, the price of a motor vehicle, trailer~~
10 ~~coach, or titled watercraft shall be the full retail price of the~~
11 ~~motor vehicle, trailer, coach, or titled watercraft being~~
12 ~~purchased.~~ The tax collected by the seller from the consumer or
13 lessee under this act shall not be considered as a part of the
14 price, but shall be considered as a tax collection for the bene-
15 fit of the state. ~~, and a~~ A person other than the state shall
16 not derive a benefit from the collection or payment of this tax.
17 A price does not include an assessment imposed pursuant to either
18 the convention and tourism marketing act, Act No. 383 of the
19 Public Acts of 1980, being sections 141.881 to 141.889 of the
20 Michigan Compiled Laws, or the community convention ~~and~~ OR
21 tourism marketing act, Act No. 395 of the Public Acts of 1980,
22 being sections 141.871 to 141.880 of the Michigan Compiled Laws,
23 ~~which~~ THAT was added to charges for rooms or lodging otherwise
24 subject, pursuant to section 3a, to tax under this act. Price
25 does not include specific charges for technical support or for
26 adapting or modifying prewritten, standard, or canned computer
27 software programs to a purchaser's needs or equipment if the

1 charges are separately stated and identified. Tax imposed
2 pursuant to this act shall not be computed or collected on rental
3 receipts ~~when~~ IF the tangible personal property rented or
4 leased has previously been subjected to a Michigan sales or use
5 tax when purchased by the lessor.

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

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

14 (i) "Department" means the revenue division of the depart-
15 ment of treasury.

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

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

1 capable of causing a machine or device having information
2 processing capabilities to indicate, perform, or achieve a par-
3 ticular function, task, or result.