

HOUSE BILL No. 5650

March 10, 1998, Introduced by Reps. Bodem, Scranton, Richner, Dobb, Goschka, Dalman, Profit, Kukuk and Cropsey and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 4 and 4k (MCL 205.94 and 205.94k), section 4
as amended by 1996 PA 436 and section 4k as amended by 1996 PA
477.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (a) Property sold in this state on which transaction a tax
3 is paid under the general sales tax act, ~~Act No. 167 of the~~
4 ~~Public Acts of 1933, being sections 205.51 to 205.78 of the~~
5 ~~Michigan Compiled Laws~~ 1933 PA 167, MCL 205.51 TO 205.78, if the
6 tax was due and paid on the retail sale to a consumer.

7 (b) Property, the storage, use, or other consumption of
8 which this state is prohibited from taxing under the constitution

1 or laws of the United States, or under the constitution of this
2 state.

3 (c) Property purchased for resale, demonstration purposes,
4 or lending or leasing to a public or parochial school offering a
5 course in automobile driving except that a vehicle purchased by
6 the school shall be certified for driving education and shall not
7 be reassigned for personal use by the school's administrative
8 personnel. For a dealer selling a new car or truck, exemption
9 for demonstration purposes shall be determined by the number of
10 new cars and trucks sold during the current calendar year or the
11 immediately preceding year without regard to specific make or
12 style according to the following schedule of 0 to 25, 2 units; 26
13 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but
14 not to exceed 25 cars and trucks in 1 calendar year for demon-
15 stration purposes. Property purchased for resale includes promo-
16 tional merchandise transferred pursuant to a redemption offer to
17 a person located outside this state or any packaging material,
18 other than promotional merchandise, acquired for use in fulfill-
19 ing a redemption offer or rebate to a person located outside this
20 state.

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

26 (e) Property the sale or use of which was already subjected
27 to a sales tax or use tax equal to, or in excess of, that imposed

1 by this act under the law of any other state or a local
2 governmental unit within a state if the tax was due and paid on
3 the retail sale to the consumer and the state or local governmen-
4 tal unit within a state in which the tax was imposed accords like
5 or complete exemption on property the sale or use of which was
6 subjected to the sales or use tax of this state. If the sale or
7 use of property was already subjected to a tax under the law of
8 any other state or local governmental unit within a state in an
9 amount less than the tax imposed by this act, this act shall
10 apply, but at a rate measured by the difference between the rate
11 provided in this act and the rate by which the previous tax was
12 computed.

13 (f) Property sold to a person engaged in a business enter-
14 prise and using and consuming the property in the tilling, plant-
15 ing, caring for, or harvesting of the things of the soil or in
16 the breeding, raising, or caring for livestock, poultry, or
17 horticultural products, including transfers of livestock, poul-
18 try, or horticultural products for further growth. At the time
19 of the transfer of that tangible personal property, the trans-
20 feree shall sign a statement, in a form approved by the depart-
21 ment, stating that the property is to be used or consumed in con-
22 nection with the production of horticultural or agricultural pro-
23 ducts as a business enterprise. The statement shall be accepted
24 by the courts as prima facie evidence of the exemption. This
25 exemption includes agricultural land tile, which means fired clay
26 or perforated plastic tubing used as part of a subsurface
27 drainage system for land used in the production of agricultural

1 products as a business enterprise and includes a portable grain
2 bin, which means a structure that is used or is to be used to
3 shelter grain and that is designed to be disassembled without
4 significant damage to its component parts. This exemption does
5 not include transfers of food, fuel, clothing, or similar tangi-
6 ble personal property for personal living or human consumption.
7 This exemption does not include tangible personal property per-
8 manently affixed and becoming a structural part of real estate.

9 (g) Property sold to the following:

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

1 while performing the service may not be excluded under this
2 subdivision, except as provided in subparagraph (ii).

3 (ii) A person, whether or not the person is an industrial
4 processor, ~~when~~ IF the property is a computer used in operating
5 industrial processing equipment; equipment used in a computer
6 assisted manufacturing system; equipment used in a computer
7 assisted design or engineering system integral to an industrial
8 process; or a subunit or electronic assembly comprising a compo-
9 nent in a computer integrated industrial processing system.

10 (h) Property or services sold to the United States, an unin-
11 corporated agency or instrumentality of the United States, an
12 incorporated agency or instrumentality of the United States
13 wholly owned by the United States or by a corporation wholly
14 owned by the United States, the American red cross and its chap-
15 ters or branches, this state, a department or institution of this
16 state, or a political subdivision of this state.

17 (i) Property or services sold to a school, hospital, or home
18 for the care and maintenance of children or aged persons, oper-
19 ated by an entity of government, a regularly organized church,
20 religious, or fraternal organization, a veterans' organization,
21 or a corporation incorporated under the laws of this state, if
22 not operated for profit, and if the income or benefit from the
23 operation does not inure, in whole or in part, to an individual
24 or private shareholder, directly or indirectly, and if the activ-
25 ities of the entity or agency are carried on exclusively for the
26 benefit of the public at large and are not limited to the
27 advantage, interests, and benefits of its members or a restricted

1 group. The tax levied does not apply to property or services
2 sold to a parent cooperative preschool. As used in this subdivi-
3 sion, "parent cooperative preschool" means a nonprofit, nondis-
4 criminatory educational institution, maintained as a community
5 service and administered by parents of children currently
6 enrolled in the preschool that provides an educational and devel-
7 opmental program for children younger than compulsory school age,
8 that provides an educational program for parents, including
9 active participation with children in preschool activities, that
10 is directed by qualified preschool personnel, and that is
11 licensed ~~by the department of consumer and industry services~~
12 pursuant to ~~Act No. 116 of the Public Acts of 1973, being sec-~~
13 ~~tions 722.111 to 722.128 of the Michigan Compiled Laws~~ 1973 PA
14 116, MCL 722.111 TO 722.128.

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

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

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

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

1 (1) Property purchased by a person engaged in the business
2 of constructing, altering, repairing, or improving real estate
3 for others to the extent the property is affixed to and made a
4 structural part of the real estate of a nonprofit hospital or a
5 nonprofit housing entity qualified as exempt pursuant to section
6 15a of the state housing development authority act of 1966, ~~Act~~
7 ~~No. 346 of the Public Acts of 1966, being section 125.1415a of~~
8 ~~the Michigan Compiled Laws~~ 1966 PA 346, MCL 125.1415A. A non-
9 profit hospital or nonprofit housing includes only the property
10 of a nonprofit hospital or the homes or dwelling places con-
11 structed by a nonprofit housing entity, the income or property of
12 which does not directly or indirectly inure to the benefit of an
13 individual, private stockholder, or other private person.

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

18 (n) A newspaper or periodical classified under federal
19 postal laws and regulations effective September 1, 1985 as second
20 class mail matter or as a controlled circulation publication or
21 qualified to accept legal notices for publication in this state,
22 as defined by law, or any other newspaper or periodical of gen-
23 eral circulation, established at least 2 years, and published at
24 least once a week, and a copyrighted motion picture film.
25 Tangible personal property used or consumed, and not becoming a
26 component part of a copyrighted motion picture film, newspaper or
27 periodical, except that portion or percentage of tangible

1 personal property used or consumed in producing an advertising
2 supplement that becomes a component part of a newspaper or peri-
3 odical is subject to tax. For purposes of this subdivision, tan-
4 gible personal property that becomes a component part of a news-
5 paper or periodical and consequently not subject to tax, includes
6 an advertising supplement inserted into and circulated with a
7 newspaper or periodical that is otherwise exempt from tax under
8 this subdivision, if the advertising supplement is delivered
9 directly to the newspaper or periodical by a person other than
10 the advertiser, or the advertising supplement is printed by the
11 newspaper or periodical.

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

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

23 (q) A vehicle for which a special registration is secured in
24 accordance with section 226(12) of the Michigan vehicle code,
25 ~~Act No. 300 of the Public Acts of 1949, being section 257.226 of~~
26 ~~the Michigan Compiled Laws~~ 1949 PA 300, MCL 257.226.

1 (r) A hearing aid, contact lenses if prescribed for a
2 specific disease ~~which~~ THAT precludes the use of eyeglasses, or
3 any other apparatus, device, or equipment used to replace or sub-
4 stitute for any part of the human body, or used to assist the
5 disabled person to lead a reasonably normal life ~~when~~ IF the
6 tangible personal property is purchased on a written prescription
7 or order issued by a health professional as defined by section 4
8 of former ~~Act No. 264 of the Public Acts of 1974~~ 1974 PA 264,
9 or section 21005 of the public health code, ~~Act No. 368 of the~~
10 ~~Public Acts of 1978, being section 333.21005 of the Michigan~~
11 ~~Compiled Laws~~ 1978 PA 368, MCL 333.21005, or eyeglasses pre-
12 scribed or dispensed to correct the person's vision by an oph-
13 thalmologist, optometrist, or optician.

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

16 (t) The purchase of machinery and equipment for use or con-
17 sumption in the rendition of any combination of services, the use
18 or consumption of which is taxable under section 3a(a) or (c)
19 except that this exemption is limited to the tangible personal
20 property located on the premises of the subscriber and to central
21 office equipment or wireless equipment, directly used or consumed
22 in transmitting, receiving, or switching or the monitoring of
23 switching of a 2-way interactive communication. As used in this
24 subdivision, central office equipment or wireless equipment does
25 not include distribution equipment including cable or wire
26 facilities.

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

4 (v) Tangible personal property purchased and installed as a
5 component part of a water pollution control facility for which a
6 tax exemption certificate is issued pursuant to part 37 (water
7 pollution control facilities; tax exemption) of the natural
8 resources and environmental protection act, ~~Act No. 451 of the~~
9 ~~Public Acts of 1994, being sections 324.3701 to 324.3708 of the~~
10 ~~Michigan Compiled Laws~~ 1994 PA 451, MCL 324.3701 TO 324.3708, or
11 an air pollution control facility for which a tax exemption cer-
12 tificate is issued pursuant to part 59 (air pollution control
13 facility; tax exemption) of ~~Act No. 451 of the Public Acts of~~
14 ~~1994, being sections 324.5901 to 324.5908 of the Michigan~~
15 ~~Compiled Laws~~ THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
16 ACT, 1994 PA 451, MCL 324.5901 TO 324.5908.

17 (w) Tangible real or personal property donated by a manufac-
18 turer, wholesaler, or retailer to an organization or entity
19 exempt pursuant to subdivision (i) or (j) or section 4a(a) or (b)
20 of ~~Act No. 167 of the Public Acts of 1933, being section 205.54a~~
21 ~~of the Michigan Compiled Laws~~ THE GENERAL SALES TAX ACT, 1933 PA
22 167, MCL 205.54A.

23 (x) The storage, use, or consumption by a domestic air car-
24 rier of an aircraft purchased after December 31, 1992 for use
25 solely in the transport of air cargo that has a maximum certifi-
26 cated takeoff weight of at least 12,500 pounds. For purposes of
27 this subdivision, the term "domestic air carrier" is limited to

1 entities engaged in the commercial transport for hire of cargo or
2 entities engaged in the commercial transport of passengers as a
3 business activity.

4 (y) The storage, use, or consumption by a domestic air car-
5 rier of an aircraft purchased after June 30, 1994 that is used
6 solely in the regularly scheduled transport of passengers. For
7 purposes of this subdivision, the term "domestic air carrier" is
8 limited to entities engaged in the commercial transport for hire
9 of cargo or entities engaged in the commercial transport of pas-
10 sengers as a business activity.

11 (z) The storage, use, or consumption by a domestic air car-
12 rier of an aircraft, other than an aircraft described under
13 subdivision (y), purchased after December 31, 1994, that has a
14 maximum certificated takeoff weight of at least 12,500 pounds and
15 that is designed to have a maximum passenger seating configura-
16 tion of more than 30 seats and used solely in the transport of
17 passengers. For purposes of this subdivision, the term "domestic
18 air carrier" is limited to entities engaged in the commercial
19 transport for hire of cargo or entities engaged in the commercial
20 transport of passengers as a business activity.

21 (AA) THE STORAGE, USE, OR CONSUMPTION BY A DOMESTIC AIR CAR-
22 RIER OF AN AIRCRAFT PURCHASED AFTER DECEMBER 31, 1996 FOR USE IN
23 THE TRANSPORT OF AIR CARGO, PASSENGERS, OR A COMBINATION OF AIR
24 CARGO AND PASSENGERS THAT HAS A MAXIMUM CERTIFIED TAKEOFF WEIGHT
25 OF AT LEAST 6,000 POUNDS. FOR PURPOSES OF THIS SUBDIVISION, THE
26 TERM "DOMESTIC AIR CARRIER" IS LIMITED TO ENTITIES ENGAGED IN THE

1 COMMERCIAL TRANSPORT FOR HIRE OF AIR CARGO, PASSENGERS, OR A
2 COMBINATION OF AIR CARGO AND PASSENGERS AS A BUSINESS ACTIVITY.

3 (BB) ~~(aa)~~ Property or services sold to a health, welfare,
4 educational, cultural arts, charitable, or benevolent organiza-
5 tion not operated for profit that has been issued before June 13,
6 1994 an exemption ruling letter to purchase items exempt from tax
7 signed by the administrator of the sales, use, and withholding
8 taxes division of the department. The department shall reissue
9 an exemption letter to each of those organizations after June 13,
10 1994 that shall remain in effect unless the organization fails to
11 meet the requirements that originally entitled it to this exemp-
12 tion; or to an organization not operated for profit and exempt
13 from federal income tax under section 501(c)(3) or 501(c)(4) of
14 the internal revenue code of 1986. ~~—, 26 U.S.C. 501.~~ The exemp-
15 tion does not apply to sales of tangible personal property and
16 sales of vehicles licensed for use on public highways, that are
17 not used primarily to carry out the purposes of the organization
18 as stated in the bylaws or articles of incorporation of the
19 exempt organization.

20 Sec. 4k. (1) The tax levied under this act does not apply
21 to parts and materials, excluding shop equipment or fuel, affixed
22 to or to be affixed in this state to an aircraft owned or used by
23 a domestic air carrier that is any of the following:

24 (a) An aircraft for use solely in the transport of air cargo
25 that has a maximum certificated takeoff weight of at least 12,500
26 pounds for taxes levied before January 1, 1997 and at least 6,000
27 pounds for taxes levied after December 31, 1996.

1 (b) An aircraft that is used solely in the regularly
2 scheduled transport of passengers.

3 (c) An aircraft other than an aircraft described in subdivi-
4 sion (b), that has a maximum certificated takeoff weight of at
5 least 12,500 pounds for taxes levied before January 1, 1997 and
6 at least 6,000 pounds for taxes levied after December 31, 1996,
7 and that is designed to have a maximum passenger seating configu-
8 ration of more than 30 seats and used solely in the transport of
9 passengers.

10 (D) FOR TAXES LEVIED AFTER DECEMBER 31, 1996, AN AIRCRAFT
11 THAT HAS A MAXIMUM CERTIFIED TAKEOFF WEIGHT OF AT LEAST 6,000
12 POUNDS FOR USE IN THE TRANSPORT OF A COMBINATION OF AIR CARGO AND
13 PASSENGERS.

14 (2) For taxes levied after December 31, 1992 and before
15 May 1, 1999, the tax levied under this act does not apply to the
16 storage, use, or consumption of rolling stock used in interstate
17 commerce and purchased, rented, or leased outside of this state
18 by an interstate motor carrier. A refund for taxes paid before
19 January 1, 1997 shall not be paid under this subsection if the
20 refund claim is made after June 30, 1997.

21 (3) For taxes levied after December 31, 1996 and before
22 May 1, 1999, the tax levied under this act does not apply to the
23 product of the out-of-state usage percentage and the price other-
24 wise taxable under this act of a qualified truck or a trailer
25 designed to be drawn behind a qualified truck, purchased, rented,
26 or leased in this state by an interstate motor carrier and used
27 in interstate commerce.

1 (4) As used in this section:

2 (a) "Domestic air carrier" is limited to entities engaged in
3 the commercial transport for hire of AIR cargo, ~~or entities~~
4 ~~engaged in the commercial transport of~~ passengers, OR A COMBINA-
5 TION OF AIR CARGO AND PASSENGERS as a business activity.

6 (b) "Interstate motor carrier" means a person engaged in the
7 business of carrying persons or property, other than themselves,
8 their employees, or their own property, for hire across state
9 lines, whose fleet mileage was driven at least 10% outside of
10 this state in the immediately preceding tax year.

11 (c) "Out-of-state usage percentage" is a fraction, the
12 numerator of which is the number of miles driven outside of this
13 state in the immediately preceding tax year by qualified trucks
14 used by the taxpayer and the denominator of which is the total
15 miles driven in the immediately preceding tax year by qualified
16 trucks used by the taxpayer. Miles driven by qualified trucks
17 used solely in intrastate commerce shall not be included in cal-
18 culating the out-of-state usage percentage.

19 (d) "Qualified truck" means a commercial motor vehicle power
20 unit that has 2 axles and a gross vehicle weight rating in excess
21 of 10,000 pounds or a commercial motor vehicle power unit that
22 has 3 or more axles.

23 (e) "Rolling stock" means a qualified truck, a trailer
24 designed to be drawn behind a qualified truck, and parts affixed
25 to either a qualified truck or a trailer designed to be drawn
26 behind a qualified truck.