

HOUSE BILL No. 6022

September 15, 1998, Introduced by Rep. Profit and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4 (MCL 205.94), as amended by 1997 PA 194.

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, 1933 PA 167, MCL 205.51
4 to 205.78, if the tax was due and paid on the retail sale to a
5 consumer. HOWEVER, THE DEPARTMENT SHALL NOT REQUIRE A SELLER TO
6 MAKE AN IRREVOCABLE DECISION APPLICABLE TO ALL TRANSACTIONS BY
7 THE SELLER AS TO WHETHER THE SELLER WILL PAY A SALES TAX ON THE
8 PURCHASE OF TANGIBLE PERSONAL PROPERTY OR COLLECT A USE TAX FROM
9 A PERSON WHO IS A CONSUMER OF THAT TANGIBLE PERSONAL PROPERTY
10 UNDER THIS ACT.

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

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

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

1 (e) Property the sale or use of which was already subjected
2 to a sales tax or use tax equal to, or in excess of, that imposed
3 by this act under the law of any other state or a local govern-
4 mental unit within a state if the tax was due and paid on the
5 retail sale to the consumer and the state or local governmental
6 unit within a state in which the tax was imposed accords like or
7 complete exemption on property the sale or use of which was sub-
8 jected to the sales or use tax of this state. If the sale or use
9 of property was already subjected to a tax under the law of any
10 other state or local governmental unit within a state in an
11 amount less than the tax imposed by this act, this act shall
12 apply, but at a rate ~~measured by~~ EQUAL TO the difference
13 between the rate provided in this act and the rate by which the
14 previous tax was computed.

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

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

11 (g) Property sold to the following:

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

1 processed for ultimate sale at retail. Sales to a person
2 performing a service who does not act as an industrial processor
3 while performing the service may not be excluded under this sub-
4 division, except as provided in subparagraph (ii).

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

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

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

1 the benefit of the public at large and are not limited to the
2 advantage, interests, and benefits of its members or a restricted
3 group. The tax levied does not apply to property or services
4 sold to a parent cooperative preschool. As used in this subdivi-
5 sion, "parent cooperative preschool" means a nonprofit, nondis-
6 criminatory educational institution, maintained as a community
7 service and administered by parents of children currently
8 enrolled in the preschool that provides an educational and devel-
9 opmental program for children younger than compulsory school age,
10 that provides an educational program for parents, including
11 active participation with children in preschool activities, that
12 is directed by qualified preschool personnel, and that is
13 licensed by the department of consumer and industry services pur-
14 suant to 1973 PA 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 (l) 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, 1966
7 PA 346, MCL 125.1415a. A nonprofit hospital or nonprofit housing
8 includes only the property of a nonprofit hospital or the homes
9 or dwelling places constructed by a nonprofit housing entity, the
10 income or property of which does not directly or indirectly inure
11 to the benefit of an individual, private stockholder, or other
12 private person.

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

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

1 supplement that becomes a component part of a newspaper or
2 periodical is subject to tax. For purposes of this subdivision,
3 tangible personal property that becomes a component part of a
4 newspaper or periodical and consequently not subject to tax,
5 includes an advertising supplement inserted into and circulated
6 with a newspaper or periodical that is otherwise exempt from tax
7 under this subdivision, if the advertising supplement is deliv-
8 ered directly to the newspaper or periodical by a person other
9 than the advertiser, or the advertising supplement is printed by
10 the newspaper or periodical.

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

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

22 (q) A vehicle for which a special registration is secured in
23 accordance with section 226(12) of the Michigan vehicle code,
24 1949 PA 300, MCL 257.226.

25 (r) A hearing aid, contact lenses if prescribed for a spe-
26 cific disease that precludes the use of eyeglasses, or any other
27 apparatus, device, or equipment used to replace or substitute for

1 any part of the human body, or used to assist the disabled person
2 to lead a reasonably normal life when the tangible personal prop-
3 erty is purchased on a written prescription or order issued by a
4 health professional as defined by section 4 of former 1974 PA
5 264, or section 21005 of the public health code, 1978 PA 368, MCL
6 333.21005, or eyeglasses prescribed or dispensed to correct the
7 person's vision by an ophthalmologist, optometrist, or optician.

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

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

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

24 (v) Tangible personal property purchased and installed as a
25 component part of a water pollution control facility for which a
26 tax exemption certificate is issued pursuant to part 37 ~~(water~~
27 ~~pollution control facilities; tax exemption)~~ of the natural

1 resources and environmental protection act, 1994 PA 451, MCL
2 324.3701 to 324.3708, or an air pollution control facility for
3 which a tax exemption certificate is issued pursuant to part 59
4 ~~(air pollution control facility; tax exemption)~~ of the natural
5 resources and environmental protection act, 1994 PA 451, MCL
6 324.5901 to 324.5908.

7 (w) Tangible real or personal property donated by a manufac-
8 turer, wholesaler, or retailer to an organization or entity
9 exempt pursuant to subdivision (i) or (j) or section 4a(a) or (b)
10 of the general sales tax act, 1933 PA 167, MCL 205.54a.

11 (x) The storage, use, or consumption by a domestic air car-
12 rier of an aircraft purchased after December 31, 1992 for use
13 solely in the transport of air cargo that has a maximum certifi-
14 cated takeoff weight of at least 12,500 pounds. For purposes of
15 this subdivision, the term "domestic air carrier" is limited to
16 entities engaged in the commercial transport for hire of cargo or
17 entities engaged in the commercial transport of passengers as a
18 business activity.

19 (y) The storage, use, or consumption by a domestic air car-
20 rier of an aircraft purchased after June 30, 1994 that is used
21 solely in the regularly scheduled transport of passengers. For
22 purposes of this subdivision, the term "domestic air carrier" is
23 limited to entities engaged in the commercial transport for hire
24 of cargo or entities engaged in the commercial transport of pas-
25 sengers as a business activity.

26 (z) The storage, use, or consumption by a domestic air
27 carrier of an aircraft, other than an aircraft described under

1 subdivision (y), purchased after December 31, 1994, that has a
2 maximum certificated takeoff weight of at least 12,500 pounds and
3 that is designed to have a maximum passenger seating configura-
4 tion of more than 30 seats and used solely in the transport of
5 passengers. For purposes of this subdivision, the term "domestic
6 air carrier" is limited to entities engaged in the commercial
7 transport for hire of cargo or entities engaged in the commercial
8 transport of passengers as a business activity.

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

26 (bb) The use or consumption of service described in section
27 3a(a) or (c) by means of a prepaid telephone calling card, a

1 prepaid authorization number for telephone use, or a charge for

2 internet access.