

**SUBSTITUTE FOR
HOUSE BILL NO. 5502**

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 2, 3, 3a, 4, 4a, 4d, 4f, 4o, 5, 6, 6a, 8, 9,
9a, 10, 11, and 14 (MCL 205.92, 205.93, 205.93a, 205.94, 205.94a,
205.94d, 205.94f, 205.94o, 205.95, 205.96, 205.96a, 205.98,
205.99, 205.99a, 205.100, 205.101, and 205.104), sections 2 and 4
as amended by 2002 PA 669, section 3 as amended by 2003 PA 27,
section 3a as amended by 2002 PA 455, section 4d as amended by
2000 PA 328, section 4f as amended by 1998 PA 266, sections 4o,
8, and 9a as added by 1999 PA 117, section 5 as amended by 2002
PA 580, section 6 as amended by 2003 PA 24, section 6a as added
by 2002 PA 511, section 10 as amended by 1998 PA 366, section 11
as added by 2000 PA 153, and section 14 as amended by 1986 PA 41,
and by adding sections 2b, 3c, 12, 13, 14a, 14b, 17, 19, and 20;
and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

10 (b) "Use" means the exercise of a right or power over
11 tangible personal property incident to the ownership of that
12 property including transfer of the property in a transaction
13 where possession is given.

14 (c) "Storage" means a keeping or retention of property in
15 this state for any purpose after the property loses its
16 interstate character.

17 (d) "Seller" means the person from whom a purchase is made
18 and includes every person selling tangible personal property or
19 services for storage, use, or other consumption in this state.
20 If, in the opinion of the department, it is necessary for the
21 efficient administration of this act to regard a salesperson,
22 representative, peddler, or canvasser as the agent of a dealer,
23 distributor, supervisor, or employer under whom the person
24 operates or from whom he or she obtains tangible personal
25 property or services sold by him or her for storage, use, or
26 other consumption in this state, irrespective of whether or not

1 he or she is making the sales on his or her own behalf or on
2 behalf of the dealer, distributor, supervisor, or employer, the
3 department may so consider him or her, and may consider the
4 dealer, distributor, supervisor, or employer as the seller for
5 the purpose of this act.

6 (e) "Purchase" means to acquire for a consideration, whether
7 the acquisition is effected by a transfer of title, of
8 possession, or of both, or a license to use or consume; whether
9 the transfer is absolute or conditional, and by whatever means
10 the transfer is effected; and whether consideration is a price or
11 rental in money, or by way of exchange or barter.

12 ~~(f) "Price" means the aggregate value in money of anything~~
13 ~~paid or delivered, or promised to be paid or delivered, by a~~
14 ~~consumer to a seller in the consummation and complete performance~~
15 ~~of the transaction by which tangible personal property or~~
16 ~~services are purchased or rented for storage, use, or other~~
17 ~~consumption in this state, without a deduction for the cost of~~
18 ~~the property sold, cost of materials used, labor or service cost,~~
19 ~~interest or discount paid, or any other expense. The price of~~
20 ~~tangible personal property, for affixation to real estate,~~
21 ~~withdrawn by a construction contractor from inventory available~~
22 ~~for sale to others or made available by publication or price list~~
23 ~~as a finished product for sale to others is the finished goods~~
24 ~~inventory value of the property. If a construction contractor~~
25 ~~manufactures, fabricates, or assembles tangible personal property~~
26 ~~before affixing it to real estate, the price of the property is~~
27 ~~equal to the sum of the materials cost of the property and the~~

~~1 cost of labor to manufacture, fabricate, or assemble the property
2 but does not include the cost of labor to cut, bend, assemble, or
3 attach property at the site of affixation to real estate. For
4 the purposes of the preceding sentence, for property withdrawn by
5 a construction contractor from inventory available for sale to
6 others or made available by publication or price list as a
7 finished product for sale to others, the materials cost of the
8 property means the finished goods inventory value of the
9 property. For purposes of this subdivision, "manufacture" means
10 to convert or condition tangible personal property by changing
11 the form, composition, quality, combination, or character of the
12 property and "fabricate" means to modify or prepare tangible
13 personal property for affixation or assembly. The price of a
14 motor vehicle, trailer coach, or titled watercraft is the full
15 retail price of the motor vehicle, trailer coach, or titled
16 watercraft being purchased. The tax collected by the seller from
17 the consumer or lessee under this act is not considered part of
18 the price, but is a tax collection for the benefit of the state,
19 and a person other than the state shall not derive a benefit from
20 the collection or payment of this tax. A price does not include
21 an assessment imposed under the convention and tourism marketing
22 act, 1980 PA 383, MCL 141.881 to 141.889, 1974 PA 263, MCL
23 141.861 to 141.867, the state convention facility development
24 act, 1985 PA 106, MCL 207.621 to 207.640, the regional tourism
25 marketing act, 1989 PA 244, MCL 141.891 to 141.900, 1991 PA 180,
26 MCL 207.751 to 207.759, or the community convention or tourism
27 marketing act, 1980 PA 395, MCL 141.871 to 141.880, that was~~

~~1 added to charges for rooms or lodging otherwise subject, pursuant
2 to section 3a, to tax under this act. Price does not include
3 specific charges for technical support or for adapting or
4 modifying prewritten, standard, or canned computer software
5 programs to a purchaser's needs or equipment if the charges are
6 separately stated and identified. The tax imposed under this act
7 shall not be computed or collected on rental receipts if the
8 tangible personal property rented or leased has previously been
9 subjected to a Michigan sales or use tax when purchased by the
10 lesser.~~

11 (f) "Purchase price" or "price" means the total amount of
12 consideration paid by the consumer to the seller, including cash,
13 credit, property, and services, for which tangible personal
14 property or services are sold, leased, or rented, valued in
15 money, whether received in money or otherwise, and applies to the
16 measure subject to use tax. Purchase price includes the
17 following subparagraphs (i) through (vi) and excludes
18 subparagraphs (vii) through (viii):

19 (i) Seller's cost of the property sold.

20 (ii) Cost of materials used, labor or service cost, interest,
21 losses, costs of transportation to the seller, taxes imposed on
22 the seller other than taxes imposed by this act, and any other
23 expense of the seller.

24 (iii) Charges by the seller for any services necessary to
25 complete the sale, other than the following:

26 (A) An amount received or billed by the taxpayer for
27 remittance to the employee as a gratuity or tip, if the gratuity

1 or tip is separately identified and itemized on the guest check
2 or billed to the customer.

3 (B) Labor or service charges involved in maintenance and
4 repair work on tangible personal property of others if separately
5 itemized.

6 (iv) Delivery charges incurred or to be incurred before the
7 completion of the transfer of ownership of tangible personal
8 property from the seller to the purchaser.

9 (v) Installation charges incurred or to be incurred before
10 the completion of the transfer of ownership of tangible personal
11 property from the seller to the purchaser.

12 (vi) Credit for any trade-in.

13 (vii) Interest, financing, or carrying charges from credit
14 extended on the sale of personal property or services, if the
15 amount is separately stated on the invoice, bill of sale, or
16 similar document given to the purchaser.

17 (viii) Any taxes legally imposed directly on the consumer
18 that are separately stated on the invoice, bill of sale, or
19 similar document given to the purchaser.

20 (g) "Consumer" means the person who has purchased tangible
21 personal property or services for storage, use, or other
22 consumption in this state and includes a person acquiring
23 tangible personal property if engaged in the business of
24 constructing, altering, repairing, or improving the real estate
25 of others.

26 (h) "Business" means all activities engaged in by a person or
27 caused to be engaged in by a person with the object of gain,

1 benefit, or advantage, either direct or indirect.

2 (i) "Department" means ~~the revenue division of the~~
3 department of treasury.

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

6 ~~(k) "Tangible personal property" includes computer software~~
7 ~~offered for general use by the public or software modified or~~
8 ~~adapted to the user's needs or equipment by the seller, only if~~
9 ~~the software is available from a seller of software on an as is~~
10 ~~basis or as an end product without modification or adaptation.~~
11 ~~Tangible personal property does not include computer software~~
12 ~~originally designed for the exclusive use and special needs of~~
13 ~~the purchaser. As used in this subdivision, "computer software"~~
14 ~~means a set of statements or instructions that when incorporated~~
15 ~~in a machine usable medium is capable of causing a machine or~~
16 ~~device having information processing capabilities to indicate,~~
17 ~~perform, or achieve a particular function, task, or result.~~

18 ~~(l) "Tangible personal property" beginning September 20,~~
19 ~~1999, includes electricity, natural or artificial gas, or steam~~
20 ~~and also the transmission and distribution of electricity used by~~
21 ~~the consumer or user of the electricity, whether the electricity~~
22 ~~is purchased from the delivering utility or from another~~
23 ~~provider.~~

24 ~~(m) "Tangible personal property" does not include a~~
25 ~~commercial advertising element if the commercial advertising~~
26 ~~element is used to create or develop a print, radio, television,~~
27 ~~or other advertisement, the commercial advertising element is~~

1 ~~discarded or returned to the provider after the advertising~~
 2 ~~message is completed, and the commercial advertising element is~~
 3 ~~custom developed by the provider for the purchaser. As used in~~
 4 ~~this subdivision, "commercial advertising element" means a~~
 5 ~~negative or positive photographic image, an audiotape or~~
 6 ~~videotape master, a layout, a manuscript, writing of copy, a~~
 7 ~~design, artwork, an illustration, retouching, and mechanical or~~
 8 ~~keyline instructions. "Tangible personal property" includes~~
 9 ~~black and white or full color process separation elements, an~~
 10 ~~audiotape reproduction, or a videotape reproduction.~~

11 **(k) "Tangible personal property" means personal property that**
 12 **can be seen, weighed, measured, felt, or touched or that is in**
 13 **any other manner perceptible to the senses and includes**
 14 **electricity, water, gas, steam, and prewritten computer software.**

15 **(l) —(n)— "Textiles" means goods that are made of or**
 16 **incorporate woven or nonwoven fabric, including, but not limited**
 17 **to, clothing, shoes, hats, gloves, handkerchiefs, curtains,**
 18 **towels, sheets, pillows, pillowcases, tablecloths, napkins,**
 19 **aprons, linens, floor mops, floor mats, and thread. Textiles**
 20 **also include materials used to repair or construct textiles, or**
 21 **other goods used in the rental, sale, or cleaning of textiles.**

22 **(m) —(o)— "Interstate motor carrier" means a person who**
 23 **operates or causes to be operated a qualified commercial motor**
 24 **vehicle on a public road or highway in this state and at least 1**
 25 **other state or Canadian province.**

26 **(n) —(p)— "Qualified commercial motor vehicle" means that**
 27 **term as defined in section 1(i), (j), and (k) of the motor**

1 carrier fuel tax act, 1980 PA 119, MCL 207.211.

2 (o) ~~-(q)-~~ "Diesel fuel" means that term as defined in section
3 2(p) of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

4 (p) "Sale" means a transaction by which tangible personal
5 property or services are purchased or rented for storage, use, or
6 other consumption in this state.

7 Sec. 2b. As used in this act:

8 (a) "Alcoholic beverage" means a beverage suitable for human
9 consumption that contains 1/2 of 1% or more of alcohol by
10 volume.

11 (b) "Computer" means an electronic device that accepts
12 information in digital or similar form and manipulates it for a
13 result based on a sequence of instructions.

14 (c) "Computer software" means a set of coded instructions
15 designed to cause a computer or automatic data processing
16 equipment to perform a task.

17 (d) "Delivered electronically" means delivered from the
18 seller to the purchaser by means other than tangible storage
19 media.

20 (e) "Delivery charges" means charges by the seller for
21 preparation and delivery to a location designated by the
22 purchaser of tangible personal property or services. Delivery
23 charges include, but are not limited to, transportation,
24 shipping, postage, handling, crating, and packing.

25 (f) "Dietary supplement" means any product, other than
26 tobacco, intended to supplement the diet that is all of the
27 following:

1 (i) Required to be labeled as a dietary supplement
2 identifiable by the "supplemental facts" box found on the label
3 as required by 21 CFR 101.36.

4 (ii) Contains 1 or more of the following dietary
5 ingredients:

6 (A) A vitamin.

7 (B) A mineral.

8 (C) An herb or other botanical.

9 (D) An amino acid.

10 (E) A dietary substance for use by humans to supplement the
11 diet by increasing the total dietary intake.

12 (F) A concentrate, metabolite, constituent, extract, or
13 combination of any ingredient listed in sub-subparagraphs (A)
14 through (E).

15 (iii) Intended for ingestion in tablet, capsule, powder,
16 softgel, gelcap, or liquid form, or if not intended for ingestion
17 in 1 of those forms, is not represented as conventional food or
18 for use as a sole item of a meal or of the diet.

19 (g) "Direct mail" means printed material delivered or
20 distributed by United States mail or other delivery service to a
21 mass audience or to addresses on a mailing list provided by the
22 purchaser or at the direction of the purchaser when the cost of
23 the items is not billed directly to the recipients, including
24 tangible personal property supplied directly or indirectly by the
25 purchaser to the direct mail seller for inclusion in the package
26 containing the printed material but not including multiple items
27 of printed material delivered to a single address.

1 (h) "Drug" means a compound, substance, or preparation, or
2 any component of a compound, substance, or preparation, other
3 than food or food ingredients, dietary supplements, or alcoholic
4 beverages, intended for human use that is 1 or more of the
5 following:

6 (i) Recognized in the official United States pharmacopoeia,
7 official homeopathic pharmacopoeia of the United States, or
8 official national formulary, or in any of their supplements.

9 (ii) Intended for use in the diagnosis, cure, mitigation,
10 treatment, or prevention of disease.

11 (iii) Intended to affect the structure or any function of the
12 body.

13 (i) "Durable medical equipment" means equipment for home use,
14 other than mobility enhancing equipment, dispensed pursuant to a
15 prescription, including repair or replacement parts for that
16 equipment, that does all of the following:

17 (i) Can withstand repeated use.

18 (ii) Is primarily and customarily used to serve a medical
19 purpose.

20 (iii) Is not useful generally to a person in the absence of
21 illness or injury.

22 (iv) Is not worn in or on the body.

23 (j) "Electronic" means relating to technology having
24 electrical, digital, magnetic, wireless, optical,
25 electromagnetic, or similar capabilities.

26 (k) "Lease or rental" means any transfer of possession or
27 control of tangible personal property for a fixed or

1 indeterminate term for consideration and may include future
2 options to purchase or extend. This definition applies only to
3 leases and rentals entered into after the effective date of the
4 amendatory act that added this section and has no retroactive
5 impact on leases and rentals that existed on that date. Lease or
6 rental does not include the following:

7 (i) A transfer of possession or control of tangible personal
8 property under a security agreement or deferred payment plan that
9 requires the transfer of title upon completion of the required
10 payments.

11 (ii) A transfer of possession or control of tangible personal
12 property under an agreement requiring transfer of title upon
13 completion of the required payments and payment of an option
14 price that does not exceed \$100.00 or 1% of the total required
15 payments, whichever is greater.

16 (iii) The provision of tangible personal property along with
17 an operator for a fixed or indeterminate period of time, where
18 that operator is necessary for the equipment to perform as
19 designed. To be necessary, an operator must do more than
20 maintain, inspect, or set up the tangible personal property.

21 (iv) An agreement covering motor vehicles or trailers if the
22 amount of consideration may be increased or decreased by
23 reference to the amount realized upon sale or disposition of the
24 property as defined in 26 USC 7701(h)(1).

25 (l) "Mobility enhancing equipment" means equipment, other
26 than durable medical equipment or a motor vehicle or equipment on
27 a motor vehicle normally provided by a motor vehicle

1 manufacturer, dispensed pursuant to a prescription, including
2 repair or replacement parts for that equipment, that is all of
3 the following:

4 (i) Primarily and customarily used to provide or increase the
5 ability to move from 1 place to another and is appropriate for
6 use at home or on a motor vehicle.

7 (ii) Not generally used by a person with normal mobility.

8 (m) "Prescription" means an order, formula, or recipe, issued
9 in any form of oral, written, electronic, or other means of
10 transmission by a licensed physician or other health professional
11 as defined in section 3501 of the insurance code of 1956, 1956 PA
12 218, MCL 500.3501.

13 (n) "Prewritten computer software" means computer software,
14 including prewritten upgrades, that is delivered by any means and
15 that is not designed and developed by the author or other creator
16 to the specifications of a specific purchaser. Prewritten
17 computer software includes all of the following:

18 (i) Any combination of 2 or more prewritten computer software
19 programs or portions of prewritten computer software programs.

20 (ii) Computer software designed and developed by the author
21 or other creator to the specifications of a specific purchaser if
22 it is sold to a person other than that specific purchaser.

23 (iii) The modification or enhancement of prewritten computer
24 software or portions of prewritten computer software where the
25 modification or enhancement is designed and developed to the
26 specifications of a specific purchaser unless there is a
27 reasonable, separately stated charge or an invoice or other

1 statement of the price is given to the purchaser for the
2 modification or enhancement. If a person other than the original
3 author or creator modifies or enhances prewritten computer
4 software, that person is considered to be the author or creator
5 of only that person's modifications or enhancements.

6 (o) "Prosthetic device" means a replacement, corrective, or
7 supportive device, other than contact lenses and dental
8 prosthesis, dispensed pursuant to a prescription, including
9 repair or replacement parts for that device, worn on or in the
10 body to do 1 or more of the following:

11 (i) Artificially replace a missing portion of the body.

12 (ii) Prevent or correct a physical deformity or malfunction
13 of the body.

14 (iii) Support a weak or deformed portion of the body.

15 (p) "Tobacco" means cigarettes, cigars, chewing or pipe
16 tobacco, or any other item that contains tobacco.

17 Sec. 3. (1) There is levied upon and there shall be
18 collected from every person in this state a specific tax for the
19 privilege of using, storing, or consuming tangible personal
20 property in this state at a rate equal to 6% of the price of the
21 property or services specified in section 3a or 3b. Penalties
22 and interest shall be added to the tax if applicable as provided
23 in this act. For the purpose of the proper administration of
24 this act and to prevent the evasion of the tax, all of the
25 following shall be presumed:

26 (a) That tangible personal property purchased is subject to
27 the tax if brought into this state within 90 days of the purchase

1 date and is considered as acquired for storage, use, or other
2 consumption in this state. ~~Beginning April 1, 2003, as used in~~
3 ~~this subsection and section 4(1)(a), the term "price" means, with~~
4 ~~respect to diesel fuel used by interstate motor carriers in a~~
5 ~~qualified commercial motor vehicle, the statewide average retail~~
6 ~~price of a gallon of self-serve diesel fuel as determined and~~
7 ~~certified quarterly by the department, rounded down to the~~
8 ~~nearest 1/10 of a cent. This use tax on diesel fuel used by~~
9 ~~interstate motor carriers in a qualified commercial motor vehicle~~
10 ~~shall be collected under the international fuel tax agreement.~~

11 (b) That tangible personal property used solely for personal,
12 nonbusiness purposes that is purchased outside of this state and
13 that is not an aircraft is exempt from the tax levied under this
14 act if 1 or more of the following conditions are satisfied:

15 (i) The property is purchased by a person who is not a
16 resident of this state at the time of purchase and is brought
17 into this state more than 90 days after the date of purchase.

18 (ii) The property is purchased by a person who is a resident
19 of this state at the time of purchase and is brought into this
20 state more than 360 days after the date of purchase.

21 (2) The tax imposed by this section for the privilege of
22 using, storing, or consuming a vehicle, ORV, manufactured
23 housing, aircraft, snowmobile, or watercraft shall be collected
24 before the transfer of the vehicle, ORV, manufactured housing,
25 aircraft, snowmobile, or watercraft, except a transfer to a
26 licensed dealer or retailer for purposes of resale that arises by
27 reason of a transaction made by a person who does not transfer

1 vehicles, ORVs, manufactured housing, aircraft, snowmobiles, or
2 watercraft in the ordinary course of his or her business done in
3 this state. The tax on a vehicle, ORV, snowmobile, and
4 watercraft shall be collected by the secretary of state before
5 the transfer of the vehicle, ORV, snowmobile, or watercraft
6 registration. The tax on manufactured housing shall be collected
7 by the department of consumer and industry services, mobile home
8 commission, or its agent before the transfer of the certificate
9 of title. The tax on an aircraft shall be collected by the
10 department of treasury. ~~Notwithstanding any limitation~~
11 ~~contained in section 2 and except as provided in this subsection,~~
12 ~~the price tax base of any vehicle, ORV, manufactured housing,~~
13 ~~aircraft, snowmobile, or watercraft subject to taxation under~~
14 ~~this act shall be not less than its retail dollar value at the~~
15 ~~time of acquisition as fixed pursuant to rules promulgated by the~~
16 ~~department. However, the price tax base of an aircraft that~~
17 ~~would otherwise qualify for the presumption under subsection~~
18 ~~(1)(b) if it were other tangible personal property shall be its~~
19 ~~retail value at the time it becomes taxable in this state. The~~
20 price tax base of a new or previously owned car or truck held for
21 resale by a dealer and that is not exempt under section 4(1)(c)
22 is the purchase price of the car or truck multiplied by 2.5% plus
23 \$30.00 per month beginning with the month that the dealer uses
24 the car or truck in a nonexempt manner.

25 (3) The following transfers or purchases are not subject to
26 use tax:

27 (a) A transaction or a portion of a transaction if the

1 transferee or purchaser is the spouse, mother, father, brother,
2 sister, child, stepparent, stepchild, stepbrother, stepsister,
3 grandparent, grandchild, legal ward, or a legally appointed
4 guardian with a certified letter of guardianship, of the
5 transferor.

6 (b) A transaction or a portion of a transaction if the
7 transfer is a gift to a beneficiary in the administration of an
8 estate.

9 (c) If a vehicle, ORV, manufactured housing, aircraft,
10 snowmobile, or watercraft that has once been subjected to the
11 Michigan sales or use tax is transferred in connection with the
12 organization, reorganization, dissolution, or partial liquidation
13 of an incorporated or unincorporated business and the beneficial
14 ownership is not changed.

15 (d) If an insurance company licensed to conduct business in
16 this state acquires ownership of a late model distressed vehicle
17 as defined in section 12a of the Michigan vehicle code, 1949 PA
18 300, MCL 257.12a, through payment of damages in response to a
19 claim or when the person who owned the vehicle before the
20 insurance company reacquires ownership from the company as part
21 of the settlement of a claim.

22 (4) The department may utilize the services, information, or
23 records of any other department or agency of state government in
24 the performance of its duties under this act, and other
25 departments or agencies of state government are required to
26 furnish those services, information, or records upon the request
27 of the department.

1 (5) Any decrease in the rate of the tax levied under
2 subsection (1) on services subject to tax under this act shall
3 apply only to billings rendered on or after the effective date of
4 the decrease.

5 Sec. 3a. (1) The use or consumption of the following
6 ~~services~~ is taxed under this act in the same manner as tangible
7 personal property is taxed under this act:

8 (a) Except as provided in section 3b, intrastate telephone,
9 telegraph, leased wire, and other similar communications,
10 including local telephone exchange and long distance telephone
11 service that both originates and terminates in Michigan, and
12 telegraph, private line, and teletypewriter service between
13 places in Michigan, but excluding telephone service by
14 coin-operated installations, switchboards,
15 concentrator-identifiers, interoffice circuitry and their
16 accessories for telephone answering service, and directory
17 advertising proceeds.

18 (b) Rooms or lodging furnished by hotelkeepers, motel
19 operators, and other persons furnishing accommodations that are
20 available to the public on the basis of a commercial and business
21 enterprise, irrespective of whether or not membership is required
22 for use of the accommodations, except rooms and lodging rented
23 for a continuous period of more than 1 month. As used in this
24 act, "hotel" or "motel" means a building or group of buildings in
25 which the public may obtain accommodations for a consideration,
26 including, without limitation, such establishments as inns,
27 motels, tourist homes, tourist houses or courts, lodging houses,

1 rooming houses, nudist camps, apartment hotels, resort lodges and
2 cabins, camps operated by other than nonprofit organizations but
3 not including those licensed under 1973 PA 116, MCL 722.111 to
4 722.128, and any other building or group of buildings in which
5 accommodations are available to the public, except accommodations
6 rented for a continuous period of more than 1 month and
7 accommodations furnished by hospitals or nursing homes.

8 (c) Except as provided in section 3b, interstate telephone
9 communications that either originate or terminate in this state
10 and for which the charge for the service is billed to a Michigan
11 service address or phone number by the provider either within or
12 outside this state including calls between this state and any
13 place within or without the United States of America outside of
14 this state. However, if the tax under this act is levied at a
15 rate of 6%, this subdivision does not apply to a wide area
16 telecommunication service or a similar type service, an 800
17 prefix service or similar type service, an interstate private
18 network and related usage charges, or an international call
19 either inbound or outbound.

20 (d) The laundering or cleaning of textiles under a sale,
21 rental, or service agreement with a term of at least 5 days.
22 This subdivision does not apply to the laundering or cleaning of
23 textiles used by a restaurant or retail sales business. As used
24 in this subdivision, "restaurant" means a food service
25 establishment defined and licensed under the food law of 2000,
26 2000 PA 92, MCL 289.1101 to 289.8111.

27 **(e) The transmission and distribution of electricity, whether**

1 the electricity is purchased from the delivering utility or from
2 another provider, if the sale is made to the consumer or user of
3 the electricity for consumption or use rather than for resale.

4 (f) For a manufacturer who affixes its product to real estate
5 and maintains an inventory of its product that is available for
6 sale to others by publication or price list, the direct
7 production costs and indirect production costs of the product
8 affixed to the real estate that are incident to and necessary for
9 production or manufacturing operations or processes, as defined
10 by the department.

11 (g) For a manufacturer who affixes its product to real estate
12 but does not maintain an inventory of its product available for
13 sale to others or make its product available for sale to others
14 by publication or price list, the sum of the materials cost of
15 the property and the cost of labor to manufacture, fabricate, or
16 assemble the property, but does not include the cost of labor to
17 cut, bend, assemble, or attach the property at the site for
18 affixation to real estate.

19 (2) If charges for intrastate telecommunications services or
20 telecommunications services between this state and another state
21 and other billed services not subject to the tax under this act
22 are aggregated with and not separately stated from charges for
23 telecommunications services that are subject to the tax under
24 this act, the nontaxable telecommunications services and other
25 nontaxable billed services are subject to the tax under this act
26 unless the service provider can reasonably identify charges for
27 telecommunications services not subject to the tax under this act

1 from its books and records that are kept in the regular course of
2 business.

3 (3) If charges for intrastate telecommunications services or
4 telecommunications services between this state and another state
5 and other billed services not subject to the tax under this act
6 are aggregated with and not separately stated from
7 telecommunications services that are subject to the tax under
8 this act, a customer may not rely upon the nontaxability of those
9 telecommunications services and other billed services unless the
10 customer's service provider separately states the charges for
11 nontaxable telecommunications services and other nontaxable
12 billed services from taxable telecommunications services or the
13 service provider elects, after receiving a written request from
14 the customer in the form required by the provider, to provide
15 verifiable data based upon the service provider's books and
16 records that are kept in the regular course of business that
17 reasonably identify the nontaxable services.

18 (4) As used in this section:

19 (a) "Fabricate" means to modify or prepare tangible personal
20 property for affixation or assembly.

21 (b) "Manufacture" means to convert or condition tangible
22 personal property by changing the form, composition, quality,
23 combination, or character of the property.

24 (c) "Manufacturer" means a person who manufactures,
25 fabricates, or assembles tangible personal property.

26 Sec. 3c. (1) Except for the defined telecommunications
27 services in section 3b and subsection (3), the sale of

1 telecommunications service sold on a call-by-call basis shall be
2 sourced to each level of taxing jurisdiction where the call
3 originates and terminates in that jurisdiction or each level of
4 taxing jurisdiction where the call either originates or
5 terminates and in which the service address is also located.

6 (2) Except for the defined telecommunications services in
7 section 3b and subsection (3), a sale of telecommunications
8 services sold on a basis other than a call-by-call basis is
9 sourced to the customer's place of primary use.

10 (3) The sale of the following telecommunications services
11 shall be sourced to each level of taxing jurisdiction as
12 follows:

13 (a) A sale of post-paid calling service is sourced to the
14 origination point of the telecommunications signal as first
15 identified by either the seller's telecommunications system, or
16 information received by the seller from its service provider,
17 where the system used to transport such signals is not that of
18 the seller.

19 (b) A sale of prepaid calling service is sourced in
20 accordance with section 20. However, for a sale of mobile
21 telecommunications service that is a prepaid telecommunications
22 service, the rule provided in section 20(1)(e) shall include as
23 an option the location associated with the mobile telephone
24 number.

25 (c) A sale of a private communication service is sourced as
26 follows:

27 (i) Service for a separate charge related to a customer

1 channel termination point is sourced to each level of
2 jurisdiction in which the customer channel termination point is
3 located.

4 (ii) Service where all customer termination points are
5 located entirely within 1 jurisdiction or levels of jurisdiction
6 is sourced in the jurisdiction in which the customer channel
7 termination points are located.

8 (iii) Service for segments of a channel between 2 customer
9 channel termination points located in different jurisdictions and
10 which segment of channel is separately charged is sourced 50% in
11 each level of jurisdiction in which the customer channel
12 termination points are located.

13 (iv) Service for segments of a channel located in more than 1
14 jurisdiction or levels of jurisdiction and which segments are not
15 separately billed is sourced in each jurisdiction based on the
16 percentage determined by dividing the number of customer channel
17 termination points in the jurisdiction by the total number of
18 customer channel termination points.

19 (4) As used in this section:

20 (a) "Air-to-ground radiotelephone service" means a radio
21 service, as that term is defined in 47 CFR part 22, in which
22 common carriers are authorized to offer and provide radio
23 telecommunications service for hire to subscribers in aircraft.

24 (b) "Call-by-call basis" means any method of charging for
25 telecommunications services where the price is measured by
26 individual calls.

27 (c) "Communications channel" means a physical or virtual path

1 of communications over which signals are transmitted between or
2 among customer channel termination points.

3 (d) "Customer" means the person or entity that contracts with
4 the seller of telecommunications services. If the end user of
5 telecommunications services is not the contracting party, the end
6 user of the telecommunications service is the customer of the
7 telecommunications service for purposes of this section.
8 Customer does not include a reseller of telecommunications
9 service or for mobile telecommunications service of a serving
10 carrier under an agreement to serve the customer outside the home
11 service provider's licensed service area.

12 (e) "Customer channel termination point" means the location
13 where the customer either inputs or receives the communications.

14 (f) "End user" means the person who utilizes the
15 telecommunications service. In the case of an entity, "end user"
16 means the individual who utilizes the service on behalf of the
17 entity.

18 (g) "Home service provider" means the facilities-based
19 carrier or reseller that enters into a contract with a customer
20 for mobile telecommunications services.

21 (h) "Mobile telecommunications services" means commercial
22 mobile radio services that originate and terminate in the same
23 state or originate in 1 state and terminate in another state.
24 Mobile telecommunications services do not include prepaid mobile
25 telecommunications services or air-ground radiotelephone
26 service.

27 (i) "Place of primary use" means the street address

1 representative of where the customer's use of the
2 telecommunications service primarily occurs, which must be the
3 residential street address or the primary business street address
4 of the customer. For mobile telecommunications services, place
5 of primary use must be within the licensed service area of the
6 home service provider.

7 (j) "Post-paid calling service" means the telecommunications
8 service obtained by making a payment on a call-by-call basis
9 either through the use of a credit card or payment mechanism such
10 as a bank card, travel card, credit card, or debit card, or by
11 charge made to a telephone number that is not associated with the
12 origination or termination of the telecommunications service. A
13 post-paid calling service includes a telecommunications service
14 that would be a prepaid calling service except it is not
15 exclusively a telecommunications service.

16 (k) "Prepaid calling service" means the right to access
17 exclusively telecommunications services, which must be paid for
18 in advance and that enables the origination of calls using an
19 access number or authorization code, whether manually or
20 electronically dialed, and that is sold in predetermined units or
21 dollars of which the number declines with use in a known amount.

22 (l) "Private communication service" means a
23 telecommunications service that entitles the customer to
24 exclusive or priority use of a communications channel or group of
25 channels between or among termination points, regardless of the
26 manner in which the channel or channels are connected, and
27 includes switching capacity, extension lines, stations, and any

1 other associated services that are provided in connection with
2 the use of such channel or channels.

3 (m) "Service address" means the following:

4 (i) The location of the telecommunications equipment to which
5 a customer's call is charged and from which the call originates
6 or terminates, regardless of where the call is billed or paid.

7 (ii) If the location in subparagraph (i) is not known,
8 service address means the origination point of the signal of the
9 telecommunications services first identified by either the
10 seller's telecommunications system or in information received by
11 the seller from its service provider, where the system used to
12 transport the signals is not that of the seller.

13 (iii) If the location in subparagraphs (i) and (ii) is not
14 known, the service address means the location of the customer's
15 place of primary use.

16 Sec. 4. (1) The following are exempt from the tax levied
17 under this act, ~~does not apply to the following,~~ subject to
18 subsection (2):

19 (a) Property sold in this state on which transaction a tax is
20 paid under the general sales tax act, 1933 PA 167, MCL 205.51 to
21 205.78, if the tax was due and paid on the retail sale to a
22 consumer. ~~Beginning April 1, 2003, in lieu of the exclusion in~~
23 ~~this subdivision, an interstate motor carrier shall be entitled~~
24 ~~to a credit under this act for 6% of the price of diesel fuel~~
25 ~~purchased in this state and used in a qualified commercial motor~~
26 ~~vehicle. This credit shall be claimed on the returns filed under~~
27 ~~the international fuel tax agreement.~~

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

5 (c) Property purchased for resale, demonstration purposes, or
6 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
17 demonstration purposes. Property purchased for resale includes
18 promotional merchandise transferred pursuant to a redemption
19 offer to a person located outside this state or any packaging
20 material, other than promotional merchandise, acquired for use in
21 fulfilling a redemption offer or rebate to a person located
22 outside this state.

23 (d) Property that is brought into this state by a nonresident
24 person for storage, use, or consumption while temporarily within
25 this state, except if the property is used in this state in a
26 nontransitory business activity for a period exceeding 15 days.
27 ~~Beginning April 1, 2003, this subdivision does not apply to~~

~~1 diesel fuel that is used, stored, or consumed in this state by
2 interstate motor carriers in qualified commercial vehicles.~~

3 (e) Property the sale or use of which was already subjected
4 to a sales tax or use tax equal to, or in excess of, that imposed
5 by this act under the law of any other state or a local
6 governmental unit within a state if the tax was due and paid on
7 the retail sale to the consumer and the state or local
8 governmental unit within a state in which the tax was imposed
9 accords like or complete exemption on property the sale or use of
10 which was subjected to the sales or use tax of this state. If
11 the sale or use of property was already subjected to a tax under
12 the law of any other state or local governmental unit within a
13 state in an amount less than the tax imposed by this act, this
14 act shall apply, but at a rate measured by the difference between
15 the rate provided in this act and the rate by which the previous
16 tax was computed. ~~Beginning April 1, 2003, this subdivision
17 does not apply to diesel fuel that is used, stored, or consumed
18 in this state by interstate motor carriers in qualified motor
19 vehicles.~~

20 (f) Property sold to a person engaged in a business
21 enterprise and using and consuming the property in the tilling,
22 planting, caring for, or harvesting of the things of the soil or
23 in the breeding, raising, or caring for livestock, poultry, or
24 horticultural products, including transfers of livestock,
25 poultry, or horticultural products for further growth. ~~At the
26 time of the transfer of that tangible personal property, the
27 transferee shall sign a statement, in a form approved by the~~

1 ~~department, stating that the property is to be used or consumed~~
2 ~~in connection with the production of horticultural or~~
3 ~~agricultural products as a business enterprise. The statement~~
4 ~~shall be accepted by the courts as prima facie evidence of the~~
5 ~~exemption.~~ This exemption includes agricultural land tile, which
6 means fired clay or perforated plastic tubing used as part of a
7 subsurface drainage system for land used in the production of
8 agricultural products as a business enterprise and includes a
9 portable grain bin, which means a structure that is used or is to
10 be used to shelter grain and that is designed to be disassembled
11 without significant damage to its component parts. This
12 exemption does not include transfers of food, fuel, clothing, or
13 similar tangible personal property for personal living or human
14 consumption. This exemption does not include tangible personal
15 property permanently affixed ~~to~~ and becoming a structural part of
16 real estate.

17 (g) Property or services sold to the United States, an
18 unincorporated agency or instrumentality of the United States, an
19 incorporated agency or instrumentality of the United States
20 wholly owned by the United States or by a corporation wholly
21 owned by the United States, the American red cross and its
22 chapters or branches, this state, a department or institution of
23 this state, or a political subdivision of this state.

24 (h) Property or services sold to a school, hospital, or home
25 for the care and maintenance of children or aged persons,
26 operated by an entity of government, a regularly organized
27 church, religious, or fraternal organization, a veterans'

1 organization, or a corporation incorporated under the laws of
2 this state, if not operated for profit, and if the income or
3 benefit from the operation does not inure, in whole or in part,
4 to an individual or private shareholder, directly or indirectly,
5 and if the activities of the entity or agency are carried on
6 exclusively for the benefit of the public at large and are not
7 limited to the advantage, interests, and benefits of its members
8 or a restricted group. The tax levied does not apply to property
9 or services sold to a parent cooperative preschool. As used in
10 this subdivision, "parent cooperative preschool" means a
11 nonprofit, nondiscriminatory educational institution, maintained
12 as a community service and administered by parents of children
13 currently enrolled in the preschool that provides an educational
14 and developmental program for children younger than compulsory
15 school age, that provides an educational program for parents,
16 including active participation with children in preschool
17 activities, that is directed by qualified preschool personnel,
18 and that is licensed by the department of consumer and industry
19 services pursuant to 1973 PA 116, MCL 722.111 to 722.128.

20 (i) Property or services sold to a regularly organized church
21 or house of religious worship except the following:

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

24 (ii) Sales of vehicles licensed for use on the public
25 highways other than a passenger van or bus with a manufacturer's
26 rated seating capacity of 10 or more that is used primarily for
27 the transportation of persons for religious purposes.

1 (j) A vessel designed for commercial use of registered
2 tonnage of 500 tons or more, if produced upon special order of
3 the purchaser, and bunker and galley fuel, provisions, supplies,
4 maintenance, and repairs for the exclusive use of a vessel of 500
5 tons or more engaged in interstate commerce.

6 (k) Property purchased for use in this state where actual
7 personal possession is obtained outside this state, the purchase
8 price or actual value of which does not exceed \$10.00 during 1
9 calendar month.

10 (l) A newspaper or periodical classified under federal postal
11 laws and regulations effective September 1, 1985 as second-class
12 mail matter or as a controlled circulation publication or
13 qualified to accept legal notices for publication in this state,
14 as defined by law, or any other newspaper or periodical of
15 general circulation, established at least 2 years, and published
16 at least once a week, and a copyrighted motion picture film.
17 Tangible personal property used or consumed in producing a
18 copyrighted motion picture film, a newspaper published more than
19 14 times per year, or a periodical published more than 14 times
20 per year, and not becoming a component part of that film,
21 newspaper, or periodical is subject to the tax. After
22 December 31, 1993, tangible personal property used or consumed in
23 producing a newspaper published 14 times or less per year or a
24 periodical published 14 times or less per year and that portion
25 or percentage of tangible personal property used or consumed in
26 producing an advertising supplement that becomes a component part
27 of a newspaper or periodical is exempt from the tax under this

1 subdivision. A claim for a refund for taxes paid before
2 January 1, 1999 under this subdivision shall be made before
3 June 30, 1999. For purposes of this subdivision, tangible
4 personal property that becomes a component part of a newspaper or
5 periodical and consequently not subject to tax, includes an
6 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 (m) Property purchased by persons licensed to operate a
13 commercial 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 (n) A person who is a resident of this state who purchases an
20 automobile in another state while in the military service of the
21 United States and who pays a sales tax in the state where the
22 automobile is purchased.

23 (o) A vehicle for which a special registration is secured in
24 accordance with section 226(12) of the Michigan vehicle code,
25 1949 PA 300, MCL 257.226.

26 ~~(p) A hearing aid, contact lenses if prescribed for a~~
27 ~~specific disease that precludes the use of eyeglasses, or any~~

~~1 other apparatus, device, or equipment used to replace or
 2 substitute for any part of the human body, or used to assist the
 3 disabled person to lead a reasonably normal life when the
 4 tangible personal property is purchased on a written prescription
 5 or order issued by a health professional as defined by section 4
 6 of former 1974 PA 264, or section 3501 of the insurance code of
 7 1956, 1956 PA 218, MCL 500.3501, or eyeglasses prescribed or
 8 dispensed to correct the person's vision by an ophthalmologist,
 9 optometrist, or optician.~~

10 **(p) The sale of a prosthetic device, durable medical
 11 equipment, or mobility enhancing equipment.**

12 (q) Water when delivered through water mains, ~~or~~ **water sold**
 13 in bulk tanks in quantities of not less than 500 gallons, **or the**
 14 **sale of bottled water.**

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

18 (s) Tangible personal property purchased and installed as a
 19 component part of a water pollution control facility for which a
 20 tax exemption certificate is issued pursuant to part 37 of the
 21 natural resources and environmental protection act, 1994 PA 451,
 22 MCL 324.3701 to 324.3708, or an air pollution control facility
 23 for which a tax exemption certificate is issued pursuant to part
 24 59 of the natural resources and environmental protection act,
 25 1994 PA 451, MCL 324.5901 to 324.5908.

26 (t) Tangible real or personal property donated by a
 27 manufacturer, wholesaler, or retailer to an organization or

1 entity exempt pursuant to subdivision (h) or (i) or section 4a(a)
2 or (b) of the general sales tax act, 1933 PA 167, MCL 205.54a.

3 ~~(u) The storage, use, or consumption by a domestic air~~
4 ~~carrier of an aircraft purchased after December 31, 1992 but~~
5 ~~before October 1, 1996 for use solely in the transport of air~~
6 ~~cargo that has a maximum certificated takeoff weight of at least~~
7 ~~12,500 pounds. For purposes of this subdivision, the term~~
8 ~~"domestic air carrier" is limited to entities engaged in the~~
9 ~~commercial transport for hire of cargo or entities engaged in the~~
10 ~~commercial transport of passengers as a business activity.~~

11 ~~(v) The storage, use, or consumption by a domestic air~~
12 ~~carrier of an aircraft purchased after June 30, 1994 but before~~
13 ~~October 1, 1996 that is used solely in the regularly scheduled~~
14 ~~transport of passengers. For purposes of this subdivision, the~~
15 ~~term "domestic air carrier" is limited to entities engaged in the~~
16 ~~commercial transport for hire of cargo or entities engaged in the~~
17 ~~commercial transport of passengers as a business activity.~~

18 ~~(w) The storage, use, or consumption by a domestic air~~
19 ~~carrier of an aircraft, other than an aircraft described under~~
20 ~~subdivision (v), purchased after December 31, 1994 but before~~
21 ~~October 1, 1996, that has a maximum certificated takeoff weight~~
22 ~~of at least 12,500 pounds and that is designed to have a maximum~~
23 ~~passenger seating configuration of more than 30 seats and used~~
24 ~~solely in the transport of passengers. For purposes of this~~
25 ~~subdivision, the term "domestic air carrier" is limited to~~
26 ~~entities engaged in the commercial transport for hire of cargo or~~
27 ~~entities engaged in the commercial transport of passengers as a~~

1 ~~business activity.~~

2 (u) ~~-(x)-~~ The storage, use, or consumption of an aircraft by
 3 a domestic air carrier ~~after September 30, 1996~~ for use solely
 4 in the transport of air cargo, passengers, or a combination of
 5 air cargo and passengers, that has a maximum certificated takeoff
 6 weight of at least 6,000 pounds. For purposes of this
 7 subdivision, the term "domestic air carrier" is limited to a
 8 person engaged primarily in the commercial transport for hire of
 9 air cargo, passengers, or a combination of air cargo and
 10 passengers as a business activity. The state treasurer shall
 11 estimate on January 1 each year the revenue lost by this act from
 12 the school aid fund and deposit that amount into the school aid
 13 fund from the general fund.

14 (v) ~~-(y)-~~ The storage, use, or consumption of an aircraft by
 15 a person who purchases the aircraft for subsequent lease to a
 16 domestic air carrier operating under a certificate issued by the
 17 federal aviation administration under ~~14 C.F.R. part 121~~ **14 CFR**
 18 **part 121**, for use solely in the regularly scheduled transport of
 19 passengers.

20 (w) ~~-(z)-~~ Property or services sold to an organization not
 21 operated for profit and exempt from federal income tax under
 22 section 501(c)(3) or 501(c)(4) of the internal revenue code, ~~of~~
 23 ~~1986, 26 U.S.C. 501~~ **26 USC 501**; or to a health, welfare,
 24 educational, cultural arts, charitable, or benevolent
 25 organization not operated for profit that has been issued before
 26 June 13, 1994 an exemption ruling letter to purchase items exempt
 27 from tax signed by the administrator of the sales, use, and

1 withholding taxes division of the department. The department
2 shall reissue an exemption letter after June 13, 1994 to each of
3 those organizations that had an exemption letter that shall
4 remain in effect unless the organization fails to meet the
5 requirements that originally entitled it to this exemption. The
6 exemption does not apply to sales of tangible personal property
7 and sales of vehicles licensed for use on public highways, that
8 are not used primarily to carry out the purposes of the
9 organization as stated in the bylaws or articles of incorporation
10 of the exempt organization.

11 **(x)** ~~—(aa)—~~ The use or consumption of services described in
12 section 3a(a) or (c) or 3b by means of a prepaid telephone
13 calling card, a prepaid authorization number for telephone use,
14 or a charge for internet access.

15 **(y)** ~~—(bb)—~~ The purchase, lease, use, or consumption of the
16 following by an industrial laundry after December 31, 1997:

17 (i) Textiles and disposable products including, but not
18 limited to, soap, paper, chemicals, tissues, deodorizers and
19 dispensers, and all related items such as packaging, supplies,
20 hangers, name tags, and identification tags.

21 (ii) Equipment, whether owned or leased, used to repair and
22 dispense textiles including, but not limited to, roll towel
23 cabinets, slings, hardware, lockers, mop handles and frames, and
24 carts.

25 (iii) Machinery, equipment, parts, lubricants, and repair
26 services used to clean, process, and package textiles and related
27 items, whether owned or leased.

(iv) Utilities such as electric, gas, water, or oil.

(v) Production washroom equipment and mending and packaging supplies and equipment.

(vi) Material handling equipment including, but not limited to, conveyors, racks, and elevators and related control equipment.

(vii) Wastewater pretreatment equipment and supplies and related maintenance and repair services.

(2) The property or services under subsection (1) are exempt only to the extent that the property or services are used for the exempt purposes if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

Sec. 4a. ~~The use of material purchased by persons engaged in the business of constructing, altering, repairing or improving real estate for others when the material so purchased by such persons is affixed and made a structural part of real estate or used and completely consumed in the fulfillment of a single contract, when the contract is either at a fixed price not subject to change or modification or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, which contract was entered into or which bid was made before September 1, 1959, shall be exempt from the additional tax imposed by Act No. 263 of the Public Acts of 1959 from September 1, 1959, or in the case of contracts with the state of Michigan, its departments or institutions, if the contract was~~

1 ~~entered into or the bid was made before January 1, 1960, shall be~~
2 ~~exempt from the tax imposed by this amendatory act. The~~
3 following are exempt from the tax under this act:

4 (a) Rental receipts if the tangible personal property rented
5 or leased was previously subject to 1 of the following when
6 purchased by the lessor:

7 (i) This act.

8 (ii) The general sales tax act, 1933 PA 167, MCL 205.51 to
9 205.78.

10 (b) Rental receipts if the tangible personal property rented
11 or leased was previously taxed under a sales or use tax act of
12 another state or a political subdivision of another state levied
13 at a rate of 6% or more.

14 (c) Specific charges for technical support or for adapting or
15 modifying prewritten computer software programs to a purchaser's
16 needs or equipment if those charges are separately stated and
17 identified.

18 (d) The sale of computer software originally designed for the
19 exclusive use and special needs of the purchaser.

20 (e) The sale of a commercial advertising element if the
21 commercial advertising element is used to create or develop a
22 print, radio, television, or other advertisement, the commercial
23 advertising element is discarded or returned to the provider
24 after the advertising message is completed, and the commercial
25 advertising element is custom developed by the provider for the
26 purchaser. As used in this subdivision, "commercial advertising
27 element" means a negative or positive photographic image, an

1 audiotape or videotape master, a layout, a manuscript, writing of
2 copy, a design, artwork, an illustration, retouching, and
3 mechanical or keyline instructions. This exemption does not
4 include black and white or full color process separation
5 elements, an audiotape reproduction, or a videotape
6 reproduction.

7 (f) The sale of oxygen for human use dispensed pursuant to a
8 prescription.

9 (g) The sale of insulin for human use.

10 (h) A meal provided free of charge or at a reduced rate to an
11 employee during work hours by a food service establishment
12 licensed by the department of agriculture.

13 (i) The sale of diesel fuel to a person who is an interstate
14 motor carrier for use in a qualified commercial motor vehicle.

15 Sec. 4d. ~~—(1) The tax levied under this act does not apply~~
16 ~~to a purchase of a prescription drug for human use or food for~~
17 ~~human consumption; to the deposit on a returnable container for a~~
18 ~~beverage or the deposit on a carton or case that is used for~~
19 ~~returnable containers; to nonalcoholic beverages and prepared~~
20 ~~food intended for immediate consumption provided during work~~
21 ~~hours for free or at a reduced rate to employees of food service~~
22 ~~establishments licensed by the Michigan department of~~
23 ~~agriculture; to food or tangible personal property purchased with~~
24 ~~federal food stamps; or to fruit or vegetable seeds and fruit or~~
25 ~~vegetable plants if purchased at a place of business authorized~~
26 ~~to accept food stamps by the food and nutrition service of the~~
27 ~~United States department of agriculture or a place of business~~

1 ~~that has made a complete and proper application for authorization~~
2 ~~to accept food stamps but has been denied authorization and~~
3 ~~provides proof of denial to the department of treasury.~~

4 ~~—— (2) "Prescription drug for human use" means insulin or a drug~~
5 ~~dispensed by a licensed pharmacist pursuant to a written~~
6 ~~prescription prescribed by a licensed physician or other health~~
7 ~~professional as defined in section 21005 of the public health~~
8 ~~code, 1978 PA 368, MCL 333.21005, for the use of a designated~~
9 ~~person, or oxygen dispensed pursuant to a written prescription or~~
10 ~~order issued by a licensed physician or other health professional~~
11 ~~as defined in section 21005 of the public health code, 1978 PA~~
12 ~~368, MCL 333.21005.~~

13 ~~—— (3) "Food for human consumption" means all food or drink~~
14 ~~items, including bottled water, primarily intended for human~~
15 ~~consumption except a beverage with an alcoholic content of 1/2 of~~
16 ~~1% or more by volume, tobacco, or tobacco products.~~

17 ~~—— (4) "Food service establishment" means that term as defined~~
18 ~~in section 1107 of the food law of 2000, 2000 PA 92, MCL~~
19 ~~289.1107.~~

20 (1) The following are exempt from the tax under this act:

21 (a) Sales of drugs for human use that can only be legally
22 dispensed by prescription or food or food ingredients, except
23 prepared food intended for immediate human consumption.

24 (b) The deposit on a returnable container for a beverage or
25 the deposit on a carton or case that is used for returnable
26 containers.

27 (c) Food or tangible personal property purchased under the

1 federal food stamp program or meals eligible to be purchased
2 under the federal food stamp program.

3 (d) Fruit or vegetable seeds and fruit or vegetable plants if
4 purchased at a place of business authorized to accept food stamps
5 by the food and nutrition service of the United States department
6 of agriculture or a place of business that has made a complete
7 and proper application for authorization to accept food stamps
8 but has been denied authorization and provides proof of denial to
9 the department of treasury.

10 (e) Live animals purchased with the intent to be slaughtered
11 for human consumption.

12 (2) Food or drink heated or cooled mechanically,
13 electrically, or by other artificial means to an average
14 temperature above 75 degrees Fahrenheit or below 65 degrees
15 Fahrenheit before sale and sold from a vending machine, except
16 milk, nonalcoholic beverages in a sealed container, and fresh
17 fruit, is subject to the tax under this act. The tax due under
18 this act on the sale of food or drink from a vending machine
19 selling both taxable items and items exempt under this subsection
20 shall be calculated under this act after December 31, 1994 based
21 on 1 of the following as determined by the taxpayer:

22 (a) Actual gross proceeds from sales at retail.

23 (b) Forty-five percent of proceeds from the sale of items
24 subject to tax under this act or exempt from the tax levied under
25 this act, other than from the sale of carbonated beverages.

26 (3) "Food and food ingredients" means substances, whether in
27 liquid, concentrated, solid, frozen, dried, or dehydrated form,

1 that are sold for ingestion or chewing by humans and are consumed
2 for their taste or nutritional value. Food and food ingredients
3 do not include alcoholic beverages and tobacco.

4 (4) "Prepared food" means the following:

5 (a) Food sold in a heated state or that is heated by the
6 seller.

7 (b) Two or more food ingredients mixed or combined by the
8 seller for sale as a single item.

9 (c) Food sold with eating utensils provided by the seller,
10 including knives, forks, spoons, glasses, cups, napkins, straws,
11 or plates, but not including a container or packaging used to
12 transport the food.

13 (5) Prepared food does not include the following:

14 (a) Food that is only cut, repackaged, or pasteurized by the
15 seller.

16 (b) Raw eggs, fish, meat, poultry, and foods containing those
17 raw items requiring cooking by the consumer in recommendations
18 contained in section 3-401.11 of part 3-4 of chapter 3 of the
19 2001 food code published by the food and drug administration of
20 the public health service of the department of health and human
21 services, to prevent foodborne illness.

22 (c) Food sold in an unheated state by weight or volume as a
23 single item, without eating utensils.

24 (d) Bakery items, including bread, rolls, buns, biscuits,
25 bagels, croissants, pastries, doughnuts, danish, cakes, tortes,
26 pies, tarts, muffins, bars, cookies, and tortillas, sold without
27 eating utensils.

1 (6) "Prepared food intended for immediate consumption" means
2 prepared food.

3 Sec. 4f. (1) In computing the amount of tax payments
4 required for any month of a seller not subject to section 6(2)
5 ~~or (3)~~ who collects the tax from the purchaser under the
6 provisions of this act, the seller who collects the tax from a
7 purchaser may deduct the amount provided by subdivision (a) or
8 (b), whichever is greater:

9 (a) If the tax that accrued to the state from the purchase of
10 tangible personal property or services during the preceding month
11 is remitted to the department on or before the ~~seventh~~ **twelfth**
12 day of the month in which remittance is due, 0.75% of the tax
13 collected at a rate of 4% for the preceding monthly period, but
14 not to exceed \$20,000.00 of the tax collected for that month. If
15 the tax that accrued to the state from the purchase of tangible
16 personal property or services during the preceding month is
17 remitted to the department after the ~~seventh~~ **twelfth** day of the
18 month and on or before the ~~fifteenth~~ **twentieth** day of the month
19 in which remittance is due, 0.50% of the tax collected at a rate
20 of 4% for the preceding monthly period, but not to exceed
21 \$15,000.00 of the tax collected for that month.

22 (b) The tax collected at a rate of 4% on \$150.00 of taxable
23 purchase price for the preceding monthly period or a prorated
24 portion of \$150.00 of the taxable purchase price for the
25 preceding month if the seller engaged in business for less than a
26 month.

27 ~~(2) Before January 1, 1999, in computing the amount of tax~~

1 ~~levied under this act for any month, a seller who collects the~~
2 ~~tax from the purchaser under this act and who is subject to~~
3 ~~section 6(2) may deduct the amount provided in this subsection.~~
4 ~~If the tax that is due to the state from the purchase of tangible~~
5 ~~personal property or services is remitted to the department on or~~
6 ~~before the eleventh day of the month in which remittance is due,~~
7 ~~0.75% of the tax due at a rate of 4% but not to exceed \$20,000.00~~
8 ~~of the tax due for that month may be deducted. If the tax that~~
9 ~~is due to the state from the purchase of tangible personal~~
10 ~~property or services is remitted to the department after the~~
11 ~~eleventh day and on or before the eighteenth day of the month in~~
12 ~~which remittance is due, 0.50% of the tax due at a rate of 4% but~~
13 ~~not to exceed \$15,000.00 of the tax due for that month may be~~
14 ~~deducted.~~

15 (2) ~~—(3)—~~ Beginning January 1, 1999, in computing the amount
16 of tax levied under this act for any month, a seller who collects
17 the tax from the purchaser under this act and who is subject to
18 section ~~—6(3)—~~ **6(2)** may deduct from the amount of the tax paid
19 0.50% of the tax due at a rate of 4%.

20 (3) ~~—(4)—~~ A deduction is not allowed under this section for
21 payments of taxes made to the department after the day the person
22 is required to pay the tax imposed by this act pursuant to
23 section 6.

24 (4) ~~—(5)—~~ If, pursuant to section ~~—6(4), the commissioner of~~
25 ~~revenue —6(3), the department~~ prescribes the filing of returns
26 and the payment of the tax for periods in excess of 1 month, a
27 seller who collects the tax from the purchaser is entitled to a

1 deduction from the tax collections remitted to the department for
2 the extended payment period that is equivalent to the deduction
3 allowed under subsection (1) ~~—, (2), or (3)—~~ **or (2)** for monthly
4 periods.

5 **(5) —(6)—** The ~~—commissioner—~~ **department** may prescribe the
6 filing of estimated returns and annual periodic reconciliations
7 as necessary to carry out the purposes of this section.

8 **(6) A seller registered under the streamlined sales and use**
9 **tax agreement may claim a deduction under this section if**
10 **provided for in the streamlined sales and use tax administration**
11 **act.**

12 Sec. 4o. (1) The tax levied under this act does not apply
13 to property sold to the following after March 30, 1999, subject
14 to subsection (2):

15 (a) An industrial processor for use or consumption in
16 industrial processing.

17 (b) A person, whether or not the person is an industrial
18 processor, if the tangible personal property is intended for
19 ultimate use in and is used in industrial processing by an
20 industrial processor.

21 (c) A person, whether or not the person is an industrial
22 processor, if the tangible personal property is used by that
23 person to perform an industrial processing activity for or on
24 behalf of an industrial processor.

25 (d) A person, whether or not the person is an industrial
26 processor, if the tangible personal property is 1 of the
27 following:

1 (i) A computer used in operating industrial processing
2 equipment.

3 (ii) Equipment used in a computer assisted manufacturing
4 system.

5 (iii) Equipment used in a computer assisted design or
6 engineering system integral to an industrial process.

7 (iv) A subunit or electronic assembly comprising a component
8 in a computer integrated industrial processing system.

9 (v) Computer equipment used in connection with the computer
10 assisted production, storage, and transmission of data if the
11 equipment would have been exempt had the data transfer been made
12 using tapes, disks, CD-ROMs, or similar media by a company whose
13 business includes publishing doctoral dissertations and
14 information archiving, and that sells the majority of the
15 company's products to nonprofit organizations exempt under
16 section ~~4(1)(x)~~ 4(1)(z).

17 (vi) Equipment used in the production of **prewritten** computer
18 software ~~that is offered for general sale to the public~~ or
19 software modified or adapted to the user's needs or equipment by
20 the seller, only if the software is available for sale from a
21 seller of software on an as-is basis or as an end product without
22 modification or adaption.

23 (2) The property under subsection (1) is exempt only to the
24 extent that the property is used for the exempt purpose stated in
25 this section. The exemption is limited to the percentage of
26 exempt use to total use determined by a reasonable formula or
27 method approved by the department.

1 (3) Industrial processing includes the following activities:

2 (a) Production or assembly.

3 (b) Research or experimental activities.

4 (c) Engineering related to industrial processing.

5 (d) Inspection, quality control, or testing to determine
6 whether particular units of materials or products or processes
7 conform to specified parameters at any time before materials or
8 products first come to rest in finished goods inventory storage.

9 (e) Planning, scheduling, supervision, or control of
10 production or other exempt activities.

11 (f) Design, construction, or maintenance of production or
12 other exempt machinery, equipment, and tooling.

13 (g) Remanufacturing.

14 (h) Processing of production scrap and waste up to the point
15 it is stored for removal from the plant of origin.

16 (i) Recycling of used materials for ultimate sale at retail
17 or reuse.

18 (j) Production material handling.

19 (k) Storage of in-process materials.

20 (4) Property that is eligible for an industrial processing
21 exemption includes the following:

22 (a) Property that becomes an ingredient or component part of
23 the finished product to be sold ultimately at retail.

24 (b) Machinery, equipment, tools, dies, patterns, foundations
25 for machinery or equipment, or other processing equipment used in
26 an industrial processing activity and in their repair and
27 maintenance.

1 (c) Property that is consumed or destroyed or that loses its
2 identity in an industrial processing activity.

3 (d) Tangible personal property, not permanently affixed and
4 not becoming a structural part of real estate, that becomes a
5 part of, or is used and consumed in installation and maintenance
6 of, systems used for an industrial processing activity.

7 (e) Fuel or energy used or consumed for an industrial
8 processing activity.

9 (f) Machinery, equipment, or materials used within a plant
10 site or between plant sites operated by the same person for
11 movement of tangible personal property in the process of
12 production.

13 (g) Office equipment, including data processing equipment,
14 used for an industrial processing activity.

15 (5) Property that is not eligible for an industrial
16 processing exemption includes the following:

17 (a) Tangible personal property permanently affixed and
18 becoming a structural part of real estate including building
19 utility systems such as heating, air conditioning, ventilating,
20 plumbing, lighting, and electrical distribution, to the point of
21 the last transformer, switch, valve, or other device at which
22 point usable power, water, gas, steam, or air is diverted from
23 distribution circuits for use in industrial processing.

24 (b) Office equipment, including data processing equipment
25 used for nonindustrial processing purposes.

26 (c) Office furniture or office supplies.

27 (d) An industrial processor's own product or finished good

1 that it uses or consumes for purposes other than industrial
2 processing.

3 (e) Tangible personal property used for receiving and storage
4 of materials, supplies, parts, or components purchased by the
5 user or consumer.

6 (f) Tangible personal property used for receiving or storage
7 of natural resources extracted by the user or consumer.

8 (g) Vehicles, including special bodies or attachments,
9 required to display a vehicle permit or license plate to operate
10 on public highways, except for a vehicle bearing a manufacturer's
11 plate or a specially designed vehicle, together with parts, used
12 to mix and agitate materials at a plant or job site in the
13 concrete manufacturing process.

14 (h) Tangible personal property used for the preparation of
15 food or beverages by a retailer for ultimate sale at retail
16 through its own locations.

17 (i) Tangible personal property used or consumed for the
18 preservation or maintenance of a finished good once it first
19 comes to rest in finished goods inventory storage.

20 (j) Returnable shipping containers or materials, except as
21 provided in subsection (4)(f).

22 (k) Tangible personal property used in the production of
23 computer software originally designed for the exclusive use and
24 special needs of the purchaser.

25 (6) Industrial processing does not include the following
26 activities:

27 (a) Purchasing, receiving, or storage of raw materials.

1 (b) Sales, distribution, warehousing, shipping, or
2 advertising activities.

3 (c) Administrative, accounting, or personnel services.

4 (d) Design, engineering, construction, or maintenance of real
5 property and nonprocessing equipment.

6 (e) Plant security, fire prevention, or medical or hospital
7 services.

8 (7) As used in this section:

9 (a) "Industrial processing" means the activity of converting
10 or conditioning tangible personal property by changing the form,
11 composition, quality, combination, or character of the property
12 for ultimate sale at retail or for use in the manufacturing of a
13 product to be ultimately sold at retail. Industrial processing
14 begins when tangible personal property begins movement from raw
15 materials storage to begin industrial processing and ends when
16 finished goods first come to rest in finished goods inventory
17 storage.

18 (b) "Industrial processor" means a person who performs the
19 activity of converting or conditioning tangible personal property
20 for ultimate sale at retail or use in the manufacturing of a
21 product to be ultimately sold at retail.

22 (c) "Product", as used in subdivision (e), includes, but is
23 not limited to, a prototype, pilot model, process, formula,
24 invention, technique, patent, or similar property, whether
25 intended to be used in a trade or business or to be sold,
26 transferred, leased, or licensed.

27 (d) "Remanufacturing" means the activity of overhauling,

1 retrofitting, fabricating, or repairing a product or its
2 component parts for ultimate sale at retail.

3 (e) "Research or experimental activity" means activity
4 incident to the development, discovery, or modification of a
5 product or a product related process. Research or experimental
6 activity also includes activity necessary for a product to
7 satisfy a government standard or to receive government approval.
8 Research or experimental activity does not include the
9 following:

10 (i) Ordinary testing or inspection of materials or products
11 for quality control purposes.

12 (ii) Efficiency surveys.

13 (iii) Management surveys.

14 (iv) Market or consumer surveys.

15 (v) Advertising or promotions.

16 (vi) Research in connection with literacy, historical, or
17 similar projects.

18 Sec. 5. (1) Except as otherwise provided in this subsection
19 **or subsection (5)**, a person engaged in the business of selling
20 tangible personal property for storage, use, or other consumption
21 in this state shall register with the department and give the
22 name and address of each agent operating in this state, the
23 location of all distribution or sales houses or offices or other
24 places of business in this state, and any other information that
25 the department requires relevant to the enforcement of this act.
26 However, a seller holding a sales tax license obtained under the
27 general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, is not

1 required to separately register with the department under this
2 act. Every seller shall **source sales in accordance with section**
3 **20 and** collect the tax imposed by this act from the consumer.

4 (2) The corporation, securities, and land development bureau
5 of the department of consumer and industry services shall not
6 issue to any foreign corporation engaged in the business of
7 selling tangible personal property a certificate of authority to
8 do business in this state or approve and file the proposed
9 articles of incorporation submitted to it by any domestic
10 corporation authorizing or permitting that corporation to conduct
11 any business of selling tangible personal property unless the
12 corporation submits with the application for the certificate of
13 authority or proposed articles of incorporation an application
14 for registration of the corporation under this act or an
15 application for a sales tax license under the general sales tax
16 act, 1933 PA 167, MCL 205.51 to 205.78. The application shall be
17 transmitted to the department by the corporation, securities, and
18 land development bureau.

19 (3) A domestic corporation or a foreign corporation
20 authorized to transact business in this state that submits a
21 certificate of dissolution or requests a certificate of
22 withdrawal from this state shall request a certificate from the
23 department stating that taxes are not due under section 27a of
24 1941 PA 122, MCL 205.27a, not more than 60 days after submitting
25 the certificate of dissolution or requesting the certificate of
26 withdrawal. A corporation that does not request a certificate
27 stating that taxes are not due is subject to the same penalties

1 under section 24 of 1941 PA 122, MCL 205.24, that a taxpayer
2 would be subject to for failure to file a return.

3 (4) A lessor may elect to pay use tax on receipts from the
4 rental or lease of the tangible personal property in lieu of
5 payment of sales or use tax on the full cost of the property at
6 the time it is acquired. For tax years that begin after
7 December 31, 2001, in order to make a valid election under this
8 subsection, a lessor of tangible personal property that is an
9 aircraft shall obtain a use tax registration by the earlier of
10 the date set for the first payment of use tax under the lease or
11 rental agreement or 90 days after the lessor first brings the
12 aircraft into this state.

13 (5) **A seller registered under the streamlined sales and use**
14 **tax agreement who is not otherwise subject to the tax under this**
15 **act is not required to register under this section because of the**
16 **registration under the streamlined sales and use tax agreement.**

17 Sec. 6. (1) Every person storing, using, or consuming
18 tangible personal property or services, the storage, use, or
19 consumption of which is subject to the tax imposed by this act
20 when the tax was not paid to a seller, and every seller
21 collecting the tax from the purchaser, unless otherwise
22 prescribed by the department under the provisions of subsection
23 (2) ~~— or (3), or (4),~~ on or before the ~~fifteenth~~ **twentieth**
24 day of each calendar month shall file with the department a
25 return for the preceding calendar month, in a form prescribed by
26 the department, showing the price of each purchase of tangible
27 personal property or services during the preceding month, and

1 other information the department considers necessary for the
2 proper administration of this act. At the same time, each person
3 shall pay to the department the amount of tax imposed by this act
4 with respect to the purchases covered by the return. ~~A return~~
5 ~~shall be signed by the person liable for the tax or his or her~~
6 ~~duly authorized agent. If the return is prepared by a person~~
7 ~~other than the taxpayer, the return shall also be signed by that~~
8 ~~person and show his or her address.~~

9 ~~(2) Before January 1, 1999, each seller that had a total tax~~
10 ~~liability after subtracting the tax payments made to the~~
11 ~~secretary of state under this act or the sales tax act, 1933 PA~~
12 ~~167, MCL 205.51 to 205.78, or after subtracting the tax credits~~
13 ~~available under section 6a of the general sales tax act, 1933 PA~~
14 ~~167, MCL 205.56a, in the immediately preceding calendar year of~~
15 ~~\$720,000.00 or more on or before the eighteenth of each month~~
16 ~~shall remit to the department, by an electronic funds transfer~~
17 ~~method approved by the commissioner of revenue, an amount equal~~
18 ~~to 95% of the taxpayer's liability under this act for the same~~
19 ~~month in the immediately preceding calendar year, or 95% of the~~
20 ~~actual liability for the current month being reported, plus a~~
21 ~~reconciliation payment equal to the difference between the tax~~
22 ~~liability determined for the immediately preceding month minus~~
23 ~~the amount of tax previously paid for that month.~~

24 ~~(2) —(3)—~~ Beginning January 1, 1999, each seller that had a
25 total tax liability after subtracting the tax payments made to
26 the secretary of state under this act or the **general** sales tax
27 act, 1933 PA 167, MCL 205.51 to 205.78, or after subtracting the

1 tax credits available under section 6a of the general sales tax
2 act, 1933 PA 167, MCL 205.56a, in the immediately preceding
3 calendar year of \$720,000.00 or more shall remit to the
4 department, by an electronic funds transfer method approved by
5 the ~~commissioner of revenue~~ **department** on or before the
6 ~~fifteenth~~ **twentieth** day of the month, an amount equal to 50% of
7 the taxpayer's liability under this act for the same month in the
8 immediately preceding calendar year, or 50% of the actual
9 liability for the month being reported, whichever is less, plus a
10 reconciliation payment equal to the difference between the tax
11 liability determined for the immediately preceding month minus
12 the amount of tax previously paid for that month. Additionally,
13 the seller shall remit to the department, by an electronic funds
14 transfer method approved by the ~~commissioner of revenue~~
15 **department** on or before the last day of the month, an amount
16 equal to 50% of the taxpayer's liability under this act for the
17 same month in the immediately preceding calendar year, or 50% of
18 the actual liability for the month being reported, whichever is
19 less.

20 (3) ~~(4)~~ If considered necessary to insure payment of the
21 tax or to provide a more efficient administration, the ~~revenue~~
22 ~~commissioner~~ **department** may require and prescribe the filing of
23 returns and payment of the tax for other than monthly periods.

24 (4) ~~(5)~~ The tax imposed under this act shall accrue to this
25 state on the last day of each calendar month.

26 (5) If a due date falls on a Saturday, Sunday, state holiday,
27 or legal banking holiday, the taxes are due on the next

1 **succeeding business day.**

2 Sec. 6a. (1) ~~Notwithstanding the provisions of section 2,~~
 3 ~~the~~ **The** organizing entity of a qualified athletic event that
 4 sells corporate sponsor contracts for the event ~~may apply the~~
 5 ~~tax under this act only to the amount charged for the rental~~
 6 **that include both taxable tangible personal property and services**
 7 **may exempt the sale** of taxable tangible personal property or
 8 taxable services if all of the following criteria have been met:

9 (a) The organizing entity is exempt or is wholly owned by an
 10 entity exempt under section 501(c)(6) of the internal revenue
 11 code, ~~of 1986~~ **26 USC 501.**

12 (b) The organizing entity provided both of the following to
 13 the department at least 180 days in advance of entering into the
 14 first corporate sponsor contract:

15 (i) Written notice of its intent to enter into corporate
 16 sponsor contracts.

17 (ii) An itemized schedule of the ~~taxable~~ tangible personal
 18 property and ~~taxable~~ services that will be provided under each
 19 corporate sponsor contract.

20 (c) The department has given written approval to the
 21 organizing ~~entity's allocation of the tax~~ **entity.**

22 (2) As used in this section, "qualified athletic event" means
 23 either of the following:

24 (a) A professional sporting competition in which individuals
 25 officially representing at least 2 countries or nations compete.

26 (b) A professional football competition in which teams
 27 compete in a postseason event to determine the league champion.

(3) This section is repealed effective January 1, 2007.

Sec. 8. (1) The ~~commissioner, in his or her discretion,~~
department may authorize a person to assume the obligation of
self-accruing and remitting use tax due on purchases or leases
directly to the department under a direct payment authorization,
if the following conditions are met:

(a) The authorization is to be used for the purchase or lease
of tangible personal property or services.

(b) The authorization is necessary because it is either
impractical at the time of acquisition to determine the manner in
which the tangible personal property or services will be used or
it will facilitate improved compliance with the tax laws of this
state.

(c) The person requesting authorization for direct payment
maintains accurate and complete records of all purchases or
leases and uses of tangible personal property or services
purchased pursuant to the direct payment authorization in a form
acceptable to the department.

(2) The ~~commissioner~~ **department** has the authority to
identify items that are not eligible for a direct payment
authorization.

Sec. 9. (1) ~~In case any~~ **If a seller or certified service**
provider who is required or authorized to collect the tax fails
to do so, ~~he shall be~~ **the seller or certified service provider**
is liable personally for ~~such~~ **the** amount ~~as he~~ **the seller or**
certified service provider failed to collect together with
penalty and interest ~~thereon~~ **on the tax**. In ~~such~~ **that** case,

1 the department ~~shall have~~ **has the** power to make an assessment
2 against ~~such~~ **the** seller **or certified service provider**, based
3 upon any information in ~~—, or which shall come into its~~ **that**
4 **comes into the department's** possession. The department shall
5 give to the seller **or certified service provider** written notice
6 of ~~such~~ **the** assessment. ~~Such~~ **The** notice may be served upon
7 the seller **or certified service provider** personally or by
8 registered mail, addressed to ~~his~~ **the** last known or business
9 address.

10 (2) As used in this section, "certified service provider"
11 means that term as defined in section 3 of the streamlined sales
12 and use tax administration act.

13 Sec. 9a. (1) ~~Beginning March 30, 1995, in~~ **In** computing
14 the amount of tax levied under this act for any month, a seller
15 may deduct the amount of bad debts from his or her gross sales,
16 rentals, or services used for the computation of the tax. The
17 amount of gross sales, rentals, or services deducted must be
18 charged off as uncollectible on the books **and records** of the
19 seller **at the time the debt becomes worthless and deducted on the**
20 **return for the period during which the bad debt is written off as**
21 **uncollectible in the claimant's books and records and must be**
22 **eligible to be deducted for federal income tax purposes.** ~~If the~~
23 ~~business consists of taxable and nontaxable transactions, the~~
24 ~~deduction equals the full amount of the bad debt if the bad debt~~
25 ~~is documented as a taxable transaction in the seller's records.~~
26 ~~If documentation is not available, the maximum deduction from~~
27 ~~gross sales, rentals, or services for any bad debts equals the~~

~~1 amount of the bad debt multiplied by the quotient resulting from~~
~~2 dividing the sales, rentals, or services taxed under this act~~
~~3 during the preceding calendar year by all sales, rentals, or~~
~~4 services during the preceding calendar year, whether or not taxed~~
~~5 under this act.~~ **For purposes of this section, a claimant who is**
6 not required to file a federal income tax return may deduct a bad
7 debt on a return filed for the period in which the bad debt
8 becomes worthless and is written off as uncollectible in the
9 claimant's books and records and would be eligible for a bad debt
10 deduction for federal income tax purposes if the claimant was
11 required to file a federal income tax return. If a consumer or
12 other person pays all or part of a bad debt with respect to which
13 a seller claimed a deduction under this section, the seller is
14 liable for the amount of taxes deducted in connection with that
15 portion of the debt for which payment is received and shall remit
16 these taxes in his or her next payment to the department. Any
17 payments made on a bad debt shall be applied proportionally first
18 to the taxable price of the property and the tax on the property
19 and second to any interest, service, or other charge.

20 (2) Any claim for a bad debt deduction under this section
21 shall be supported by that evidence required by the department.
22 The department shall review any change in the rate of taxation
23 applicable to any taxable sales, rentals, or services by a seller
24 claiming a deduction pursuant to this section and shall ensure
25 that the deduction on any bad debt does not result in the seller
26 claiming the deduction recovering any more or less than the taxes
27 imposed on the sale, rental, or service that constitutes the bad

1 debt.

2 (3) If a certified service provider assumed filing
3 responsibility under the streamlined sales and use tax
4 administration act, the certified service provider may claim, on
5 behalf of the seller, any bad debt allowable to the seller and
6 shall credit or refund that amount of bad debt allowed or
7 refunded to the seller.

8 (4) If the books and records of a seller under the
9 streamlined sales and use tax act that claims a bad debt
10 allowance support an allocation of the bad debts among member
11 states of that agreement, the seller may allocate the bad debts.

12 (5) ~~—(3)—~~ As used in this section, "bad debt" means any
13 portion of a debt resulting from a seller's collection of the use
14 tax **under this act** on the purchase of tangible personal property
15 or services that is not otherwise deductible or excludable —
16 ~~that has become worthless or uncollectible in the time period~~
17 ~~between the date when taxes accrue to the state for the seller's~~
18 ~~preceding use tax return and the date when taxes accrue to the~~
19 ~~state for the present return,~~ and that is eligible to be
20 claimed, or could be eligible to be claimed if the seller kept
21 accounts on an accrual basis, as a deduction pursuant to section
22 166 of the internal revenue code, **26 USC 166**. A bad debt does
23 not include any of the following:

24 (a) Interest, **finance charge**, or use tax on the purchase
25 price.

26 (b) Uncollectible amounts on property that remains in the
27 possession of the seller until the full purchase price is paid.

1 (c) Expenses incurred in attempting to collect any account
2 receivable or any portion of the debt recovered.

3 (d) Any accounts receivable that have been sold to **and remain**
4 **in the possession of** a third party for collection.

5 (e) Repossessed property.

6 Sec. 10. (1) The tax imposed by this act shall be
7 administered by the ~~revenue commissioner~~ **department** under 1941
8 PA 122, MCL 205.1 to 205.31, **the streamlined sales and use tax**
9 **administration act**, and this act. If **the provisions of** 1941 PA
10 122, MCL 205.1 to 205.31, **the streamlined sales and use tax**
11 **administration act**, and this act conflict, the provisions of this
12 act apply.

13 (2) Rules shall be promulgated to implement this act under
14 the administrative procedures act of 1969, 1969 PA 306, MCL
15 24.201 to 24.328.

16 (3) Claims for refund pursuant to the 1988 amendatory act
17 amending section 2 shall be filed not later than March 31, 1989.
18 The approved refunds shall be paid without interest. The
19 department shall not pay refunds totaling more than \$1,000,000.00
20 in any 1 fiscal year, unless the single business tax act, 1975 PA
21 228, MCL 208.1 to 208.145, is amended to impose a 1-year
22 surcharge on the business activity of contract construction to
23 recover the cost of the refunds.

24 (4) A claim for a refund pursuant to the final decision of
25 the Michigan court of appeals in the case of GTE Sprint
26 Communications Corp. v Michigan Department of Treasury, 179 Mich
27 App 276, 1989, LV DEN 436 Mich ~~874~~ **875**, 1990, shall be filed

1 not later than January 1, 1994 by a person that paid the tax
2 under this act for interstate access telephone services for the
3 period beginning August 1, 1988 through January 1, 1991. The
4 approved refund shall be paid without interest. The department
5 shall pay the refund in 12 equal installments commencing in the
6 month that the person begins applying the refunds to the billings
7 of its current Michigan interstate subscribers in a manner
8 consistent with the requirements of the federal communications
9 commission.

10 ~~(5) A claim for a refund for the exemption provided by the~~
11 ~~1998 amendatory act that added subdivision (cc) to section 4~~
12 ~~shall be filed not later than 90 days after the effective date of~~
13 ~~the amendatory act that added this subsection.~~

14 **(5) A seller shall not separately state on an invoice, bill**
15 **of sale, or other similar document given to the purchaser the tax**
16 **imposed under the tobacco products tax act, 1993 PA 327, MCL**
17 **205.421 to 205.436.**

18 Sec. 11. (1) If a person liable for collection of the tax
19 under this act refunds or provides a credit for all or a portion
20 of the amount of the purchase price paid for returned tangible
21 personal property within the time period for returns stated in
22 that person's refund policy or 180 days after the initial sale,
23 whichever is sooner, that person shall also refund or provide a
24 credit for the tax levied under this act that was added to all or
25 that portion of the amount of the purchase price paid that is
26 refunded or credited.

27 (2) If a person liable for collection of the tax under this

1 act refunds or provides a credit for all or a portion of an
2 amount paid for a service taxable under this act within the time
3 period for returns stated in that person's refund policy or 180
4 days after the initial sale, whichever is sooner, that person
5 shall also refund or provide a credit for the tax paid under this
6 act on all or that portion of the amount paid for services that
7 is refunded or credited.

8 (3) A cause of action against a seller for overcollected
9 sales or use taxes does not accrue until a purchaser has provided
10 written notice to a seller and the seller has had 60 days to
11 respond. The purchaser shall provide in the notice sufficient
12 information to determine the validity of the request. In matters
13 relating to the request, a seller is presumed to have a
14 reasonable business practice if in the collection of sales and
15 use tax, the seller has a certified service provider or a system,
16 including a proprietary system, certified by the department and
17 has remitted to this state all taxes collected less any
18 deductions, credits, or collection allowances.

19 Sec. 12. (1) A business purchaser other than a holder of a
20 direct pay permit under section 8 that, at the time of its
21 purchase of electronically delivered computer software, knows
22 that the electronically delivered computer software will be
23 concurrently available for use in more than 1 taxing jurisdiction
24 shall deliver to the seller at the time of purchase an MPU
25 exemption form, which shall be prescribed by and available from
26 the department.

27 (2) Upon receipt of the MPU exemption form, the seller is

1 relieved of all obligation to collect, pay, or remit the
2 applicable tax and the purchaser is then obligated to pay the
3 applicable tax on a direct pay basis.

4 (3) A purchaser who delivers an MPU exemption form may use
5 any reasonable, consistent, and uniform method of apportionment
6 of the tax supported by the purchaser's business records as they
7 exist at the time of consummation of the sale.

8 (4) The MPU exemption form remains in affect for all
9 subsequent sales of electronically delivered computer software by
10 the seller to the purchaser until revoked in writing. However,
11 the apportionment may change based on the business records as
12 they exist at the time of each subsequent sale.

13 (5) A business purchaser that is a holder of a direct pay
14 permit is not required to deliver an MPU exemption form to the
15 seller but shall apportion the tax on electronically delivered
16 computer software using any reasonable, consistent, and uniform
17 method supported by the purchaser's business records as they
18 exist at the time of consummation of the sale.

19 (6) As used in this section, "MPU exemption form" means a
20 multiple points of use form.

21 Sec. 13. (1) A purchaser of direct mail other than a holder
22 of a direct pay permit under section 8 shall provide to the
23 seller at the time of purchase either a direct mail form as
24 prescribed by the department or information indicating the taxing
25 jurisdictions to which the direct mail is delivered to
26 recipients.

27 (2) Upon receipt of the direct mail form, the seller is

1 relieved of all obligation to collect, pay, or remit the
2 applicable tax and the purchaser is then obligated to pay the
3 applicable tax on a direct pay basis.

4 (3) A direct mail form remains in effect for all subsequent
5 sales of direct mail by the seller to the purchaser until revoked
6 in writing.

7 (4) Upon receipt of information from the purchaser indicating
8 the taxing jurisdictions to which the direct mail is delivered to
9 recipients, the seller shall collect the tax according to that
10 delivery information. In the absence of bad faith, the seller is
11 relieved of any further obligation to collect the tax if the
12 seller collected the tax using the delivery information provided
13 by the purchaser.

14 (5) If the purchaser does not have a direct pay permit and
15 does not provide the seller with a direct mail form or delivery
16 information as required in subsection (1), the seller shall
17 collect the tax in the same manner as provided in section 19.
18 Nothing in this subsection limits a purchaser's obligation for
19 the tax under this act.

20 (6) A purchaser who provides the seller with documentation of
21 a direct pay permit is not required to provide a direct mail form
22 or delivery information.

23 Sec. 14. (1) A person in the business of selling tangible
24 personal property and liable for any tax imposed under this act
25 shall keep accurate and complete beginning and annual inventory
26 and purchase records of additions to inventory, complete daily
27 sales records, receipts, invoices, bills of lading, ~~and any~~ and

1 all pertinent documents in a form the department ~~may require~~
2 **requires**. If an exemption from this tax is claimed by reason of
3 any of the exemptions or deductions granted under this act, a
4 record shall be kept of the name and address of the person to
5 whom the sale is made, the date of the sale, the article
6 purchased, the use to be made of the article, and the amount of
7 the sale, and if that person has a sales tax license issued under
8 the provisions of the general sales tax act, ~~Act No. 167 of the~~
9 ~~Public Acts of 1933, as amended being sections 205.51 to 205.78~~
10 ~~of the Michigan Compiled Laws~~ **1933 PA 167, MCL 205.51 to 205.78,**
11 that number shall also be included. Any person knowingly making
12 a sale of tangible personal property for the purpose of resale at
13 retail to another person not licensed under ~~Act No. 167 of the~~
14 ~~Public Acts of 1933, as amended, shall be~~ **the general sales tax**
15 **act, 1933 PA 167, MCL 205.51 to 205.78, is** liable for the tax
16 imposed by this act unless the transaction is exempt under the
17 provisions of section 4h. These records must be kept for a
18 period of 4 years after the tax imposed under this act to which
19 the records apply is due or as otherwise provided by law. If the
20 department considers it necessary, the department may require any
21 person, by notice served upon that person, to make a return,
22 render under oath certain statements, or keep certain records the
23 department considers sufficient to show whether or not that
24 person is liable for tax under this act. If the taxpayer fails
25 to file a return or to maintain or preserve proper records as
26 prescribed in this section, or the department has reason to
27 believe that any records maintained or returns filed are

1 inaccurate or incomplete and that additional taxes are due, the
2 department may assess the amount of the tax due from the taxpayer
3 based on information that is available or that may become
4 available to the department. That assessment shall be considered
5 prima facie correct for the purpose of this act and the burden of
6 proof of refuting the assessment shall be upon the taxpayer.

7 (2) This section does not apply if this state becomes a
8 member of the streamlined sales and use tax agreement.

9 Sec. 14a. (1) A person in the business of selling tangible
10 personal property and liable for any tax under this act shall
11 keep accurate and complete beginning and annual inventory and
12 purchase records of additions to inventory, complete daily sales
13 records, receipts, invoices, bills of lading, and all pertinent
14 documents in a form the department requires. If an exemption
15 from use tax is claimed by a person because the sale is for
16 resale at retail, a record shall be kept of the sales tax license
17 number if the person has a sales tax license. These records
18 shall be retained for a period of 4 years after the tax imposed
19 under this act to which the records apply is due or as otherwise
20 provided by law.

21 (2) If the department considers it necessary, the department
22 may require a person, by notice served upon that person, to make
23 a return, render under oath certain statements, or keep certain
24 records the department considers sufficient to show whether or
25 not that person is liable for the tax under this act.

26 (3) A person knowingly making a sale of tangible personal
27 property for the purpose of resale at retail to another person

1 not licensed under this act is liable for the tax imposed under
2 this act unless the transaction is exempt under the provisions of
3 section 4i.

4 (4) If a taxpayer fails to file a return or to maintain or
5 preserve proper records as prescribed in this section, or the
6 department has reason to believe that any records maintained or
7 returns filed are inaccurate or incomplete and that additional
8 taxes are due, the department may assess the amount of the tax
9 due from the taxpayer based on information that is available or
10 that may become available to the department. That assessment is
11 considered prima facie correct for the purpose of this act and
12 the burden of proof of refuting the assessment is upon the
13 taxpayer.

14 (5) For purposes of this act, exemption certificate includes
15 a blanket exemption certificate on a form prescribed by the
16 department that covers all exempt transfers between the taxpayer
17 and the buyer for a period of 4 years or for a period of less
18 than 4 years as stated on the blanket exemption certificate if
19 that period is agreed to by the buyer and taxpayer.

20 (6) This section applies when this state is a member state of
21 the streamlined sales and use tax agreement.

22 Sec. 14b. (1) If an exemption from the tax under this act
23 is claimed, the seller shall obtain identifying information of
24 the purchaser and the reason for claiming the exemption at the
25 time of the purchase or at a later date. The seller shall obtain
26 the same information for a claimed exemption regardless of the
27 medium in which the transaction occurred.

1 (2) A seller shall use a standard format for claiming an
2 exemption electronically as adopted by the governing board under
3 the streamlined sales and use tax agreement.

4 (3) A purchaser is not required to provide a signature to
5 claim an exemption under this act unless a paper exemption form
6 is used.

7 (4) A seller shall maintain a proper record of all exempt
8 transactions and shall provide them when requested by the
9 department.

10 (5) A seller who complies with the requirements of this
11 section is not liable for the tax under this act if a purchaser
12 improperly claims an exemption. A purchaser who improperly
13 claims an exemption is liable for the tax due under this act.
14 This subsection does not apply if a seller fraudulently fails to
15 collect the tax or solicits a purchaser to make an improper claim
16 for exemption.

17 Sec. 17. Beginning not later than January 1, 2006, in
18 determining the amount of the tax under this act, the seller
19 shall compute the tax to the third decimal place and round up to
20 a whole cent when the third decimal place is greater than 4 or
21 round down to a whole cent when the third decimal place is 4 or
22 less.

23 Sec. 19. The tax collected by the seller from the consumer
24 or lessee under this act is for the benefit of this state, and a
25 person other than this state shall not derive a benefit from the
26 collection or payment of this tax.

27 Sec. 20. (1) For sourcing a sale subject to tax under this

1 act, the following apply:

2 (a) If a product is received by the purchaser at a business
3 location of the seller, the sale is sourced to that business
4 location.

5 (b) If a product is not received by the purchaser at a
6 business location of the seller, the sale is sourced to the
7 location where the product is received by the purchaser or the
8 purchaser's designee, including the location indicated by
9 instructions for delivery to the purchaser, known to the seller.

10 (c) If subdivision (a) or (b) does not apply, the sale is
11 sourced to the location indicated by an address for the purchaser
12 available from the seller's business records maintained in the
13 ordinary course of the seller's business, provided use of the
14 address does not constitute bad faith.

15 (d) If subdivisions (a) through (c) do not apply, the sale is
16 sourced to the location indicated by an address for the purchaser
17 obtained at the completion of the sale, including the address of
18 the purchaser's payment instrument if no other address is
19 available, provided use of the address does not constitute bad
20 faith.

21 (e) If subdivisions (a) through (d) do not apply or the
22 seller has insufficient information to apply subdivisions (a)
23 through (d), the sale will be sourced to the location indicated
24 by the address from which the tangible personal property was
25 shipped or from which the computer software delivered
26 electronically was first available for transmission by the
27 seller.

1 (2) For sourcing the lease or rental of tangible personal
2 property, other than property included in subsection (3) or (4),
3 subject to tax under this act, the following apply:

4 (a) For a lease or rental requiring recurring periodic
5 payments, the first payment is sourced in the same manner
6 provided for a sale in subsection (1). Subsequent payments shall
7 be sourced to the primary property location for each period
8 covered by the payment as indicated by the address of the
9 property provided by the lessee and available to the lessor from
10 the lessor's records maintained in the ordinary course of
11 business, when use of this address does not constitute bad
12 faith. The property location is not considered altered by
13 intermittent use at different locations such as business property
14 that accompanies employees on business trips or service calls.

15 (b) For a lease or rental not requiring recurring periodic
16 payments, the payment is sourced in the same manner provided for
17 a sale in subsection (1).

18 (3) For sourcing the lease or rental of motor vehicles,
19 trailers, semitrailers, or aircraft that are not transportation
20 equipment, the following apply:

21 (a) For a lease or rental requiring recurring periodic
22 payments, each payment is sourced to the primary property
23 location as indicated by the address of the property provided by
24 the lessee and available to the lessor from the lessor's records
25 maintained in the ordinary course of business, when use of this
26 address does not constitute bad faith. The property location is
27 not considered altered by intermittent use at a different

1 location.

2 (b) For a lease or rental not requiring recurring periodic
3 payments, the payment is sourced in the same manner provided for
4 a sale in subsection (1).

5 (4) The lease or rental of transportation equipment shall be
6 sourced in the same manner provided for a sale in subsection
7 (1).

8 (5) Subsections (2) and (3) do not affect the imposition or
9 computation of the tax under the general sales tax act, 1933 PA
10 167, MCL 205.51 to 205.78, on leases or rentals based on a
11 lump-sum or accelerated basis or on the acquisition of property
12 for lease.

13 (6) As used in this section:

14 (a) "Receive" and "receipt" mean 1 or more of the following
15 but exclude possession by a shipping company on behalf of the
16 purchaser:

17 (i) Taking possession of tangible personal property.

18 (ii) Making first use of services.

19 (b) "Transportation equipment" means 1 or more of the
20 following:

21 (i) Locomotives and railcars utilized for the carriage of
22 persons or property in interstate commerce.

23 (ii) Trucks and truck-tractors with a gross vehicle weight
24 rating of 10,001 pounds or greater, trailers, semitrailers, or
25 passenger buses, which are registered through the international
26 registration plan and operated under authority of a carrier
27 authorized and certificated by the United States department of

1 transportation or another federal authority to engage in the
2 carriage of persons or property in interstate commerce.

3 (iii) Aircraft operated by air carriers authorized and
4 certificated by the United States department of transportation or
5 other federal or foreign authority to transport air cargo or
6 passengers in interstate or foreign commerce.

7 (iv) Containers designed for use on or component parts
8 attached or secured to the equipment included in subparagraphs
9 (i) to (iii).

10 (7) A person may deviate from the sourcing requirements under
11 this section as provided in section 12 or 13.

12 Enacting section 1. Sections 4b, 4c, 4e, 4r, and 4v of the
13 use tax act, 1937 PA 94, MCL 205.94b, 205.94c, 205.94e, 205.94r,
14 and 205.94v, are repealed.

15 Enacting section 2. This amendatory act takes effect July
16 1, 2004.

17 Enacting section 3. This amendatory act does not take
18 effect unless all of the following bills of the 92nd Legislature
19 are enacted into law:

20 (a) House Bill No. 5503.

21 (b) House Bill No. 5504.

22 (c) House Bill No. 5505.