

SUBSTITUTE FOR
HOUSE BILL NO. 5198

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending the title and sections 3a and 5 (MCL 205.93a and
205.95), sections 3a and 5 as amended by 2004 PA 172, and by adding
section 4z.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to provide for the levy, assessment, and collection of
a specific excise tax on the storage, use, or consumption in this
state of tangible personal property and certain services; to
appropriate the proceeds thereof; ~~and OF THAT TAX;~~ to prescribe
penalties; ~~for violations of the provisions of this act~~ **AND TO MAKE**
APPROPRIATIONS.

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

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1 taxed under this act:

2 (a) Except as provided in section 3b, intrastate telephone,
3 telegraph, leased wire, and other similar communications, including
4 local telephone exchange and long distance telephone service that
5 both originates and terminates in ~~Michigan~~**THIS STATE**, and
6 telegraph, private line, and teletypewriter service between places
7 in ~~Michigan~~**THIS STATE**, but excluding telephone service by coin-
8 operated installations, switchboards, concentrator-identifiers,
9 interoffice circuitry and their accessories for telephone answering
10 service, and directory advertising proceeds.

11 (b) Rooms or lodging furnished by hotelkeepers, motel
12 operators, and other persons furnishing accommodations that are
13 available to the public on the basis of a commercial and business
14 enterprise, irrespective of whether or not membership is required
15 for use of the accommodations, except rooms and lodging rented for
16 a continuous period of more than 1 month. As used in this act,
17 "hotel" or "motel" means a building or group of buildings in which
18 the public may obtain accommodations for a consideration,
19 including, without limitation, such establishments as inns, motels,
20 tourist homes, tourist houses or courts, lodging houses, rooming
21 houses, nudist camps, apartment hotels, resort lodges and cabins,
22 camps operated by other than nonprofit organizations but not
23 including those licensed under 1973 PA 116, MCL 722.111 to 722.128,
24 and any other building or group of buildings in which
25 accommodations are available to the public, except accommodations
26 rented for a continuous period of more than 1 month and
27 accommodations furnished by hospitals or nursing homes.

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

13 (d) The laundering or cleaning of textiles under a sale,
14 rental, or service agreement with a term of at least 5 days. This
15 subdivision does not apply to the laundering or cleaning of
16 textiles used by a restaurant or retail sales business. As used in
17 this subdivision, "restaurant" means a food service establishment
18 defined and licensed under the food law of 2000, 2000 PA 92, MCL
19 289.1101 to 289.8111.

20 (e) The transmission and distribution of electricity, whether
21 the electricity is purchased from the delivering utility or from
22 another provider, if the sale is made to the consumer or user of
23 the electricity for consumption or use rather than for resale.

24 (f) For a manufacturer who affixes its product to real estate
25 and maintains an inventory of its product that is available for
26 sale to others by publication or price list, the direct production
27 costs and indirect production costs of the product affixed to the

1 real estate that are incident to and necessary for production or
2 manufacturing operations or processes, as defined by the
3 department.

4 (g) For a manufacturer who affixes its product to real estate
5 but does not maintain an inventory of its product available for
6 sale to others or make its product available for sale to others by
7 publication or price list, the sum of the materials cost of the
8 property and the cost of labor to manufacture, fabricate, or
9 assemble the property, but ~~does not include~~ the cost of labor to
10 cut, bend, assemble, or attach the property at the site for
11 affixation to real estate.

12 (2) If charges for intrastate telecommunications services or
13 telecommunications services between this state and another state
14 and other billed services not subject to the tax under this act are
15 aggregated with and not separately stated from charges for
16 telecommunications services that are subject to the tax under this
17 act, the nontaxable telecommunications services and other
18 nontaxable billed services are subject to the tax under this act
19 unless the service provider can reasonably identify charges for
20 telecommunications services not subject to the tax under this act
21 from its books and records that are kept in the regular course of
22 business.

23 (3) If charges for intrastate telecommunications services or
24 telecommunications services between this state and another state
25 and other billed services not subject to the tax under this act are
26 aggregated with and not separately stated from telecommunications
27 services that are subject to the tax under this act, a customer may

not rely upon the nontaxability of those telecommunications services and other billed services unless the customer's service provider separately states the charges for nontaxable telecommunications services and other nontaxable billed services from taxable telecommunications services or the service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the service provider's books and records that are kept in the regular course of business that reasonably identify the nontaxable services.

(4) THERE IS APPROPRIATED TO THE DEPARTMENT OF TREASURY FOR THE 2006-2007 STATE FISCAL YEAR THE SUM OF \$1.00 TO IMPLEMENT THE REQUIREMENTS OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.

(5) ~~(4)~~—As used in this section:

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

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

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

SEC. 4Z. THE TAX UNDER THIS ACT DOES NOT APPLY TO THE SALE OF TANGIBLE PERSONAL PROPERTY OR SERVICES TO A QUALIFIED DISABLED VETERAN. AS USED IN THIS SECTION:

(A) "QUALIFIED DISABLED VETERAN" MEANS A VETERAN WITH A SERVICE-CONNECTED DISABILITY.

(B) "SERVICE-CONNECTED DISABILITY" MEANS A DISABILITY INCURRED

1 OR AGGRAVATED IN THE LINE OF DUTY IN THE ACTIVE MILITARY, NAVAL, OR
 2 AIR SERVICE AS DESCRIBED IN 38 USC 101(16).

3 (C) "VETERAN" MEANS A PERSON WHO SERVED IN THE ACTIVE
 4 MILITARY, NAVAL, OR AIR SERVICE AND WHO WAS DISCHARGED OR RELEASED
 5 FROM HIS OR HER SERVICE UNDER CONDITIONS OTHER THAN DISHONORABLE.

6 Sec. 5. (1) Except as otherwise provided in this subsection or
 7 subsection (5), a person engaged in the business of selling
 8 tangible personal property for storage, use, or other consumption
 9 in this state shall register with the department and give the name
 10 and address of each agent operating in this state, the location of
 11 all distribution or sales houses or offices or other places of
 12 business in this state, and any other information that the
 13 department requires relevant to the enforcement of this act.
 14 However, a seller holding a sales tax license obtained under the
 15 general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, is not
 16 required to separately register with the department under this act.
 17 Every seller shall source sales in accordance with section 20 and
 18 collect the tax imposed by this act from the consumer.

19 (2) The corporation, securities, and land development bureau
 20 of the department of ~~consumer and industry services~~ **LABOR AND**
 21 **ECONOMIC GROWTH** shall not issue to any foreign corporation engaged
 22 in the business of selling tangible personal property a certificate
 23 of authority to do business in this state or approve and file the
 24 proposed articles of incorporation submitted to it by any domestic
 25 corporation authorizing or permitting that corporation to conduct
 26 any business of selling tangible personal property unless the
 27 corporation submits with the application for the certificate of

1 authority or proposed articles of incorporation an application for
2 registration of the corporation under this act or an application
3 for a sales tax license under the general sales tax act, 1933 PA
4 167, MCL 205.51 to 205.78. The application shall be transmitted to
5 the department by the corporation, securities, and land development
6 bureau.

7 (3) A domestic corporation or a foreign corporation authorized
8 to transact business in this state that submits a certificate of
9 dissolution or requests a certificate of withdrawal from this state
10 shall request a certificate from the department stating that taxes
11 are not due under section 27a of 1941 PA 122, MCL 205.27a, not more
12 than 60 days after submitting the certificate of dissolution or
13 requesting the certificate of withdrawal. A corporation that does
14 not request a certificate stating that taxes are not due is subject
15 to the same penalties under section 24 of 1941 PA 122, MCL 205.24,
16 that a taxpayer would be subject to for failure to file a return.

17 (4) A lessor may elect to pay use tax on receipts from the
18 rental or lease of the tangible personal property in lieu of
19 payment of sales or use tax on the full cost of the property at the
20 time it is acquired. For tax years that begin after December 31,
21 2001, in order to make a valid election under this subsection, a
22 lessor of tangible personal property that is an aircraft shall
23 obtain a use tax registration by the earlier of the date set for
24 the first payment of use tax under the lease or rental agreement or
25 90 days after the lessor first brings the aircraft into this state.

26 (5) A seller registered under the streamlined sales and use
27 tax agreement who is not otherwise subject to the tax under this

1 act is not required to register under this section because of the
2 registration under the streamlined sales and use tax agreement.

3 Enacting section 1. This amendatory act takes effect October
4 1, 2007.

5 Enacting section 2. This amendatory act does not take effect
6 unless House Bill No. 5194 of the 94th Legislature is enacted into
7 law.