

SENATE 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:

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TITLE

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.

Sec. 3a. (1) The use or consumption of the following **SERVICES**

1 is taxed under this act in the same manner as tangible personal
2 property is taxed under this act:

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

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

1 accommodations furnished by hospitals or nursing homes.

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

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

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

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

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

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

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

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

1 services that are subject to the tax under this act, a customer may
2 not rely upon the nontaxability of those telecommunications
3 services and other billed services unless the customer's service
4 provider separately states the charges for nontaxable
5 telecommunications services and other nontaxable billed services
6 from taxable telecommunications services or the service provider
7 elects, after receiving a written request from the customer in the
8 form required by the provider, to provide verifiable data based
9 upon the service provider's books and records that are kept in the
10 regular course of business that reasonably identify the nontaxable
11 services.

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

15 (5) ~~(4)~~—As used in this section:

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

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

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

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

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

1 (B) "SERVICE-CONNECTED DISABILITY" MEANS A DISABILITY INCURRED
 2 OR AGGRAVATED IN THE LINE OF DUTY IN THE ACTIVE MILITARY, NAVAL, OR
 3 AIR SERVICE AS DESCRIBED IN 38 USC 101(16).

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

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

21 (2) The corporation, securities, and land development bureau
 22 of the department of ~~consumer and industry services~~ **LABOR AND**
 23 **ECONOMIC GROWTH** shall not issue to any foreign corporation ~~engaged~~
 24 ~~in the business of selling tangible personal property~~ **SUBJECT TO**
 25 **THE TAX UNDER THIS ACT** a certificate of authority to do business in
 26 this state or approve and file the proposed articles of
 27 incorporation submitted to it by any domestic corporation

1 authorizing or permitting that corporation to conduct any business
2 ~~of selling tangible personal property~~ **SUBJECT TO THE TAX UNDER THIS**
3 **ACT** unless the corporation submits with the application for the
4 certificate of authority or proposed articles of incorporation an
5 application for registration of the corporation under this act or
6 an application for a sales tax license under the general sales tax
7 act, 1933 PA 167, MCL 205.51 to 205.78. The application shall be
8 transmitted to the department by the corporation, securities, and
9 land development bureau.

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

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

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1 90 days after the lessor first brings the aircraft into this state.

2 (5) A seller registered under the streamlined sales and use
3 tax agreement who is not otherwise subject to the tax under this
4 act is not required to register under this section because of the
5 registration under the streamlined sales and use tax agreement.

6 Enacting section 1. This amendatory act takes effect October
7 1, 2007.

<<Enacting section 2. This amendatory act does not take effect
unless all of the following bills of the 94th Legislature are enacted
into law:

- (a) Senate Bill No. 1.
- (b) Senate Bill No. 395.
- (c) Senate Bill No. 396.
- (d) Senate Bill No. 397.
- (e) Senate Bill No. 398.
- (f) Senate Bill No. 418.
- (g) Senate Bill No. 419.
- (h) Senate Bill No. 420.
- (i) Senate Bill No. 421.
- (j) Senate Bill No. 546.
- (k) Senate Bill No. 547.
- (l) Senate Bill No. 549.
- (m) Senate Bill No. 622.
- (n) Senate Bill No. 632.
- (o) House Bill No. 4246.
- (p) House Bill No. 4266.
- (q) House Bill No. 4800.>>