

HOUSE BILL No. 5192

September 7, 2007, Introduced by Rep. Tobocman and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 2b, 3, 3a, and 10 (MCL 205.92b, 205.93,
205.93a, and 205.100), section 2b as amended by 2006 PA 428 and
sections 3, 3a, and 10 as amended by 2004 PA 172.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

7 (c) "Computer software" means a set of coded instructions

1 designed to cause a computer or automatic data processing equipment
2 to perform a task.

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

5 (e) "Delivery charges" means charges by the seller for
6 preparation and delivery to a location designated by the purchaser
7 of tangible personal property or services. Delivery charges
8 include, but are not limited to, transportation, shipping, postage,
9 handling, crating, and packing. ~~Beginning September 1, 2004,~~

10 ~~delivery~~ **DELIVERY** charges do not include the charges for delivery
11 of direct mail if the charges are separately stated on an invoice
12 or similar billing document given to the purchaser.

13 (f) "Dietary supplement" means any product, other than
14 tobacco, intended to supplement the diet that is all of the
15 following:

16 (i) Required to be labeled as a dietary supplement identifiable
17 by the "supplemental facts" box found on the label as required by
18 21 CFR 101.36.

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

20 (A) A vitamin.

21 (B) A mineral.

22 (C) An herb or other botanical.

23 (D) An amino acid.

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

26 (F) A concentrate, metabolite, constituent, extract, or
27 combination of any ingredient listed in sub-subparagraphs (A)

1 through (E).

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

6 (g) "Direct mail" means printed material delivered or
7 distributed by United States mail or other delivery service to a
8 mass audience or to addresses on a mailing list provided by the
9 purchaser or at the direction of the purchaser when the cost of the
10 items is not billed directly to the recipients, including tangible
11 personal property supplied directly or indirectly by the purchaser
12 to the direct mail seller for inclusion in the package containing
13 the printed material but not including multiple items of printed
14 material delivered to a single address.

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

19 (i) Recognized in the official United States pharmacopoeia,
20 official homeopathic pharmacopoeia of the United States, or
21 official national formulary, or in any of their supplements.

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

24 (iii) Intended to affect the structure or any function of the
25 body.

26 (i) "Durable medical equipment" means equipment for home use,
27 other than mobility enhancing equipment, dispensed pursuant to a

1 prescription, including repair or replacement parts for that
2 equipment, that does all of the following:

3 (i) Can withstand repeated use.

4 (ii) Is primarily and customarily used to serve a medical
5 purpose.

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

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

9 (j) "Electronic" means relating to technology having
10 electrical, digital, magnetic, wireless, optical, electromagnetic,
11 or similar capabilities.

12 (K) "HOTEL" OR "MOTEL" MEANS A BUILDING OR GROUP OF BUILDINGS
13 IN WHICH THE PUBLIC MAY OBTAIN ACCOMMODATIONS FOR A CONSIDERATION,
14 INCLUDING, BUT NOT LIMITED TO, SUCH ESTABLISHMENTS AS INNS, MOTELS,
15 TOURIST HOMES, TOURIST HOUSES OR COURTS, LODGING HOUSES, ROOMING
16 HOUSES, NUDIST CAMPS, APARTMENT HOTELS, RESORT LODGES AND CABINS,
17 CAMPS OPERATED BY OTHER THAN NONPROFIT ORGANIZATIONS BUT NOT
18 INCLUDING THOSE LICENSED UNDER 1973 PA 116, MCL 722.111 TO 722.128,
19 AND ANY OTHER BUILDING OR GROUP OF BUILDINGS IN WHICH
20 ACCOMMODATIONS ARE AVAILABLE TO THE PUBLIC, EXCEPT ACCOMMODATIONS
21 RENTED FOR A CONTINUOUS PERIOD OF MORE THAN 1 MONTH AND
22 ACCOMMODATIONS FURNISHED BY HOSPITALS OR NURSING HOMES.

23 (I) ~~(k)~~—"Lease or rental" means any transfer of possession or
24 control of tangible personal property for a fixed or indeterminate
25 term for consideration and may include future options to purchase
26 or extend. This definition applies only to leases and rentals
27 entered into after September 1, 2004 and has no retroactive impact

1 on leases and rentals that existed on that date. Lease or rental
2 does not include the following:

3 (i) A transfer of possession or control of tangible personal
4 property under a security agreement or deferred payment plan that
5 requires the transfer of title upon completion of the required
6 payments.

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

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

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

21 (M) ~~(H)~~ "Mobility enhancing equipment" means equipment, other
22 than durable medical equipment or a motor vehicle or equipment on a
23 motor vehicle normally provided by a motor vehicle manufacturer,
24 dispensed pursuant to a prescription, including repair or
25 replacement parts for that equipment, that is all of the following:

26 (i) Primarily and customarily used to provide or increase the
27 ability to move from 1 place to another and is appropriate for use

1 at home or on a motor vehicle.

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

3 (N) ~~(m)~~—"Prescription" means an order, formula, or recipe,
4 issued in any form of oral, written, electronic, or other means of
5 transmission by a licensed physician or other health professional
6 as defined in section 3501 of the insurance code of 1956, 1956 PA
7 218, MCL 500.3501.

8 (O) ~~(n)~~—"Prewritten computer software" means computer
9 software, including prewritten upgrades, that is delivered by any
10 means and that is not designed and developed by the author or other
11 creator to the specifications of a specific purchaser. Prewritten
12 computer software includes all of the following:

13 (i) Any combination of 2 or more prewritten computer software
14 programs or portions of prewritten computer software programs.

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

18 (iii) The modification or enhancement of prewritten computer
19 software or portions of prewritten computer software where the
20 modification or enhancement is designed and developed to the
21 specifications of a specific purchaser unless there is a
22 reasonable, separately stated charge or an invoice or other
23 statement of the price is given to the purchaser for the
24 modification or enhancement. If a person other than the original
25 author or creator modifies or enhances prewritten computer
26 software, that person is considered to be the author or creator of
27 only that person's modifications or enhancements.

1 (P) ~~(e)~~—"Prosthetic device" means a replacement, corrective,
 2 or supportive device, other than contact lenses and dental
 3 prosthesis, dispensed pursuant to a prescription, including repair
 4 or replacement parts for that device, worn on or in the body to do
 5 1 or more of the following:

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

7 (ii) Prevent or correct a physical deformity or malfunction of
 8 the body.

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

10 (Q) ~~(p)~~—"Tobacco" means cigarettes, cigars, chewing or pipe
 11 tobacco, or any other item that contains tobacco.

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

21 (a) That tangible personal property purchased is subject to
 22 the tax if brought into this state within 90 days of the purchase
 23 date and is considered as acquired for storage, use, or other
 24 consumption in this state.

25 (b) That tangible personal property used solely for personal,
 26 nonbusiness purposes that is purchased outside of this state and
 27 that is not an aircraft is exempt from the tax levied under this

1 act if 1 or more of the following conditions are satisfied:

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

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

8 (2) The tax imposed by this section for the privilege of
9 using, storing, or consuming a vehicle, ORV, manufactured housing,
10 aircraft, snowmobile, or watercraft shall be collected before the
11 transfer of the vehicle, ORV, manufactured housing, aircraft,
12 snowmobile, or watercraft, except a transfer to a licensed dealer
13 or retailer for purposes of resale that arises by reason of a
14 transaction made by a person who does not transfer vehicles, ORVs,
15 manufactured housing, aircraft, snowmobiles, or watercraft in the
16 ordinary course of his or her business done in this state. The tax
17 on a vehicle, ORV, snowmobile, and watercraft shall be collected by
18 the secretary of state before the transfer of the vehicle, ORV,
19 snowmobile, or watercraft registration. The tax on manufactured
20 housing shall be collected by the department of consumer and
21 industry services, mobile home commission, or its agent before the
22 transfer of the certificate of title. The tax on an aircraft shall
23 be collected by the department of treasury. The price tax base of a
24 new or previously owned car or truck held for resale by a dealer
25 and that is not exempt under section 4(1)(c) is the purchase price
26 of the car or truck multiplied by 2.5% plus \$30.00 per month
27 beginning with the month that the dealer uses the car or truck in a

1 nonexempt manner.

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

4 (a) A transaction or a portion of a transaction if the
5 transferee or purchaser is the spouse, mother, father, brother,
6 sister, child, stepparent, stepchild, stepbrother, stepsister,
7 grandparent, grandchild, legal ward, or a legally appointed
8 guardian with a certified letter of guardianship, of the
9 transferor.

10 (b) A transaction or a portion of a transaction if the
11 transfer is a gift to a beneficiary in the administration of an
12 estate.

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

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

26 (4) The department may utilize the services, information, or
27 records of any other department or agency of state government in

1 the performance of its duties under this act, and other departments
2 or agencies of state government are required to furnish those
3 services, information, or records upon the request of the
4 department.

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

9 (6) AS USED IN THIS SECTION, "ORV" MEANS THAT TERM AS DEFINED
10 IN SECTION 81101 OF THE NATURAL RESOURCES AND ENVIRONMENTAL
11 PROTECTION ACT, 1994 PA 451, MCL 324.81101.

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

15 (a) Except as provided in section 3b, intrastate telephone,
16 telegraph, leased wire, and other similar communications, including
17 local telephone exchange and long distance telephone service that
18 both originates and terminates in ~~Michigan~~ **THIS STATE**, and
19 telegraph, private line, and teletypewriter service between places
20 in ~~Michigan~~ **THIS STATE**, but excluding telephone service by coin-
21 operated installations, switchboards, concentrator-identifiers,
22 interoffice circuitry and their accessories for telephone answering
23 service, and directory advertising proceeds.

24 (b) Rooms or lodging furnished by hotelkeepers, motel
25 operators, and other persons furnishing accommodations that are
26 available to the public on the basis of a commercial and business
27 enterprise, irrespective of whether or not membership is required

1 for use of the accommodations, except rooms and lodging rented for
2 a continuous period of more than 1 month. ~~As used in this act,~~
3 ~~"hotel" or "motel" means a building or group of buildings in which~~
4 ~~the public may obtain accommodations for a consideration,~~
5 ~~including, without limitation, such establishments as inns, motels,~~
6 ~~tourist homes, tourist houses or courts, lodging houses, rooming~~
7 ~~houses, nudist camps, apartment hotels, resort lodges and cabins,~~
8 ~~camps operated by other than nonprofit organizations but not~~
9 ~~including those licensed under 1973 PA 116, MCL 722.111 to 722.128,~~
10 ~~and any other building or group of buildings in which~~
11 ~~accommodations are available to the public, except accommodations~~
12 ~~rented for a continuous period of more than 1 month and~~
13 ~~accommodations furnished by hospitals or nursing homes.~~

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

26 (d) The laundering or cleaning of textiles under a sale,
27 rental, or service agreement with a term of at least 5 days. This

1 subdivision does not apply to the laundering or cleaning of
2 textiles used by a restaurant or retail sales business. ~~As used in~~
3 ~~this subdivision, "restaurant" means a food service establishment~~
4 ~~defined and licensed under the food law of 2000, 2000 PA 92, MCL~~
5 ~~289.1101 to 289.8111.~~

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

10 (f) For a manufacturer who affixes its product to real estate
11 and maintains an inventory of its product that is available for
12 sale to others by publication or price list, the direct production
13 costs and indirect production costs of the product affixed to the
14 real estate that are incident to and necessary for production or
15 manufacturing operations or processes, as defined by the
16 department.

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

25 (2) If charges for intrastate telecommunications services or
26 telecommunications services between this state and another state
27 and other billed services not subject to the tax under this act are

1 aggregated with and not separately stated from charges for
2 telecommunications services that are subject to the tax under this
3 act, the nontaxable telecommunications services and other
4 nontaxable billed services are subject to the tax under this act
5 unless the service provider can reasonably identify charges for
6 telecommunications services not subject to the tax under this act
7 from its books and records that are kept in the regular course of
8 business.

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

24 (4) As used in this section:

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

27 (b) "Manufacture" means to convert or condition tangible

1 personal property by changing the form, composition, quality,
2 combination, or character of the property.

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

5 (D) "RESTAURANT" MEANS A FOOD SERVICE ESTABLISHMENT DEFINED
6 AND LICENSED UNDER THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1101
7 TO 289.8111.

8 Sec. 10. (1) The tax imposed by this act shall be administered
9 by the department under 1941 PA 122, MCL 205.1 to 205.31, the
10 streamlined sales and use tax administration act, **2004 PA 174, MCL**
11 **205.801 TO 205.833**, and this act. If the provisions of 1941 PA 122,
12 MCL 205.1 to 205.31, the streamlined sales and use tax
13 administration act, **2004 PA 174, MCL 205.801 TO 205.833**, and this
14 act conflict, the provisions of this act apply.

15 (2) Rules shall be promulgated to implement this act under the
16 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
17 24.328.

18 (3) Claims for refund pursuant to the 1988 amendatory act
19 amending section 2 shall be filed not later than March 31, 1989.
20 The approved refunds shall be paid without interest. The department
21 shall not pay refunds totaling more than \$1,000,000.00 in any 1
22 fiscal year, unless the single business tax act, 1975 PA 228, MCL
23 208.1 to 208.145, **OR THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL**
24 **208.1101 TO 208.1601**, is amended to impose a 1-year surcharge on
25 the business activity of contract construction to recover the cost
26 of the refunds.

27 ~~(4) A claim for a refund pursuant to the final decision of the~~

~~Michigan court of appeals in the case of GTE Sprint Communications Corp. v Michigan Department of Treasury, 179 Mich App 276, 1989, LV DEN 436 Mich 875, 1990, shall be filed not later than January 1, 1994 by a person that paid the tax under this act for interstate access telephone services for the period beginning August 1, 1988 through January 1, 1991. The approved refund shall be paid without interest. The department shall pay the refund in 12 equal installments commencing in the month that the person begins applying the refunds to the billings of its current Michigan interstate subscribers in a manner consistent with the requirements of the federal communications commission.~~

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