

# HOUSE BILL No. 5198

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 the title and sections 3a and 5 (MCL 205.93a and 205.95), sections 3a and 5 as amended by 2004 PA 172.

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

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

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

27 (c) Except as provided in section 3b, interstate telephone

1 communications that either originate or terminate in this state and  
2 for which the charge for the service is billed to a ~~Michigan~~  
3 service address **IN THIS STATE** or phone number by the provider  
4 either within or outside this state including calls between this  
5 state and any place within or without the United States of America  
6 outside of this state. ~~However, if the tax under this act is levied~~  
7 ~~at a rate of 6%~~ **THIS SUBDIVISION DOES NOT APPLY TO AN 800 PREFIX**  
8 **SERVICE OR SIMILAR TYPE SERVICE. BEFORE OCTOBER 1, 2007, this**  
9 subdivision does not apply to a wide area telecommunication service  
10 or a similar type service, ~~an 800 prefix service or similar type~~  
11 ~~service,~~ an interstate private network and related usage charges,  
12 or an international call either inbound or outbound. **BEGINNING**  
13 **OCTOBER 1, 2007, A WIDE AREA TELECOMMUNICATION SERVICE OR A SIMILAR**  
14 **TYPE SERVICE, AN INTERSTATE PRIVATE NETWORK AND RELATED USAGE**  
15 **CHARGES, OR AN INTERNATIONAL CALL EITHER INBOUND OR OUTBOUND IS**  
16 **TAXED UNDER THIS ACT IN THE SAME MANNER AS INTERSTATE TELEPHONE**  
17 **COMMUNICATIONS.**

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

25 (e) The transmission and distribution of electricity, whether  
26 the electricity is purchased from the delivering utility or from  
27 another provider, if the sale is made to the consumer or user of

1 the electricity for consumption or use rather than for resale.

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

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

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

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

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

19           (5) ~~(4)~~As used in this section:

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

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

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

27           Sec. 5. (1) Except as otherwise provided in this subsection or

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

13 (2) The corporation, securities, and land development bureau  
14 of the department of ~~consumer and industry services~~ **LABOR AND**  
15 **ECONOMIC GROWTH** shall not issue to any foreign corporation engaged  
16 in the business of selling tangible personal property a certificate  
17 of authority to do business in this state or approve and file the  
18 proposed articles of incorporation submitted to it by any domestic  
19 corporation authorizing or permitting that corporation to conduct  
20 any business of selling tangible personal property unless the  
21 corporation submits with the application for the certificate of  
22 authority or proposed articles of incorporation an application for  
23 registration of the corporation under this act or an application  
24 for a sales tax license under the general sales tax act, 1933 PA  
25 167, MCL 205.51 to 205.78. The application shall be transmitted to  
26 the department by the corporation, securities, and land development  
27 bureau.

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

11           (4) A lessor may elect to pay use tax on receipts from the  
12 rental or lease of the tangible personal property in lieu of  
13 payment of sales or use tax on the full cost of the property at the  
14 time it is acquired. For tax years that begin after December 31,  
15 2001, in order to make a valid election under this subsection, a  
16 lessor of tangible personal property that is an aircraft shall  
17 obtain a use tax registration by the earlier of the date set for  
18 the first payment of use tax under the lease or rental agreement or  
19 90 days after the lessor first brings the aircraft into this state.

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

24           Enacting section 1. This amendatory act takes effect October  
25 1, 2007.