

HOUSE BILL No. 5255

September 19, 2007, Introduced by Reps. Meisner, Gillard, Alma Smith, Warren, Wojno, Bieda, Cushingberry, Clack, Angerer, Kathleen Law, Byrnes, Tobocman and Condino and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending sections 2, 4a, 4g, 4i, 4m, 4r, 4t, 4x, 4aa, and 6a (MCL 205.52, 205.54a, 205.54g, 205.54i, 205.54m, 205.54r, 205.54t, 205.54x, 205.54aa, and 205.56a), sections 2, 4a, 4g, 4i, 4m, 4r, and 4t as amended by 2004 PA 173, section 4x as amended by 2006 PA 17, section 4aa as added by 2002 PA 617, and section 6a as amended by 1993 PA 325.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Except as provided in section 2a, there is levied
2 upon and there shall be collected from all persons engaged in the
3 business of making sales at retail, by which ownership of tangible
4 personal property is transferred for consideration, an annual tax
5 for the privilege of engaging in that business equal to 6%, of the

1 gross proceeds of the business, plus the penalty and interest if
2 applicable as provided by law, less deductions allowed by this act.

3 (2) The tax under subsection (1) also applies to the
4 following:

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

9 (b) The sale of a prepaid telephone calling card or a prepaid
10 authorization number **OR CODE** for telephone use, rather than for
11 resale, including the reauthorization of a prepaid telephone
12 calling card or a prepaid authorization number **OR CODE**.

13 (c) A conditional sale, installment lease sale, or other
14 transfer of property, if title is retained as security for the
15 purchase but is intended to be transferred later.

16 (3) Any person engaged in the business of making sales at
17 retail who is at the same time engaged in some other kind of
18 business, occupation, or profession not taxable under this act
19 shall keep books to show separately the transactions used in
20 determining the tax levied ~~by~~ **UNDER** this act. If the person fails
21 to keep separate books, there shall be levied upon him or her the
22 tax provided for in subsection (1) equal to 6% of the entire gross
23 proceeds of both or all of his or her businesses. The taxes levied
24 by this section are a personal obligation of the taxpayer.

25 (4) ~~A~~ **BEFORE OCTOBER 1, 2007, A** meal provided free of charge
26 or at a reduced rate to an employee during work hours by a food
27 service establishment licensed ~~by the Michigan department of~~

1 ~~agriculture~~ **UNDER THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1101 TO**
2 **289.8111**, for the convenience of the employer is not considered
3 transferred for consideration.

4 Sec. 4a. (1) Subject to subsection (2), the following are
5 exempt from the tax under this act:

6 (a) A sale of tangible personal property not for resale to a
7 nonprofit school, nonprofit hospital, or nonprofit home for the
8 care and maintenance of children or aged persons operated by an
9 entity of government, a regularly organized church, religious ~~—~~or
10 fraternal organization, a veterans' organization, or a corporation
11 incorporated under the laws of this state, if the income or benefit
12 from the operation does not inure, in whole or in part, to an
13 individual or private shareholder, directly or indirectly, and if
14 the activities of the entity or agency are carried on exclusively
15 for the benefit of the public at large and are not limited to the
16 advantage, interests, and benefits of its members or any restricted
17 group. A sale of tangible personal property to a parent cooperative
18 preschool is exempt from taxation under this act. As used in this
19 subdivision, "parent cooperative preschool" means a nonprofit,
20 nondiscriminatory educational institution, maintained as a
21 community service and administered by parents of children currently
22 enrolled in the preschool, that provides an educational and
23 developmental program for children younger than compulsory school
24 age, that provides an educational program for parents, including
25 active participation with children in preschool activities, that is
26 directed by qualified preschool personnel, and that is licensed ~~by~~
27 ~~the department of consumer and industry services pursuant to 1973~~

1 PA 116, MCL 722.111 to 722.128.

2 (b) A sale of tangible personal property not for resale to a
3 regularly organized church or house of religious worship, except
4 the following:

5 (i) Sales in activities that are mainly commercial enterprises.

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

10 (c) The sale of food to bona fide enrolled students by a
11 school or other educational institution not operated for profit.

12 (d) The sale of a vessel designated for commercial use of
13 registered tonnage of 500 tons or more, if produced upon special
14 order of the purchaser, and bunker and galley fuel, provisions,
15 supplies, maintenance, and repairs for the exclusive use of the
16 vessel engaged in interstate commerce.

17 (e) A sale of tangible personal property to persons engaged in
18 a business enterprise and using or consuming the tangible personal
19 property in the tilling, planting, caring for, or harvesting of the
20 things of the soil; in the breeding, raising, or caring for
21 livestock, poultry, or horticultural products, including transfers
22 of livestock, poultry, or horticultural products for further
23 growth; or in the direct gathering of fish, by net, line, or
24 otherwise only by an owner-operator of the business enterprise, not
25 including a charter fishing business enterprise. This exemption
26 includes agricultural land tile, which means fired clay or
27 perforated plastic tubing used as part of a subsurface drainage

1 system for land, and subsurface irrigation pipe, if the land tile
2 or irrigation pipe is used in the production of agricultural
3 products as a business enterprise. This exemption includes a
4 portable grain bin, which means a structure that is used or is to
5 be used to shelter grain and that is designed to be disassembled
6 without significant damage to its component parts. This exemption
7 also includes grain drying equipment and natural or propane gas
8 used to fuel that equipment for agricultural purposes. This
9 exemption does not include transfers of food, fuel, clothing, or
10 any similar tangible personal property for personal living or human
11 consumption. This exemption does not include tangible personal
12 property permanently affixed and becoming a structural part of real
13 estate.

14 (f) The sale of a copyrighted motion picture film or a
15 newspaper ~~or periodical~~ admitted under federal postal laws and
16 regulations effective September 1, 1985 as second-class mail matter
17 or as a controlled circulation publication or qualified to accept
18 legal notices for publication in this state, as defined by law, or
19 any other newspaper ~~or periodical~~ of general circulation,
20 established not less than 2 years, and published not less than once
21 a week, **OR, BEFORE OCTOBER 1, 2007, A PERIODICAL ADMITTED UNDER**
22 **FEDERAL POSTAL LAWS AND REGULATIONS EFFECTIVE SEPTEMBER 1, 1985 AS**
23 **SECOND-CLASS MAIL.** Tangible personal property used or consumed in
24 producing a copyrighted motion picture film, a newspaper published
25 more than 14 times per year, or a periodical published more than 14
26 times per year, and not becoming a component part of that film,
27 newspaper, or periodical is subject to the tax. Tangible personal

1 property used or consumed in producing a newspaper published 14
2 times or less per year or a periodical published 14 times or less
3 per year and that portion or percentage of tangible personal
4 property used or consumed in producing an advertising supplement
5 that becomes a component part of a newspaper or periodical is
6 exempt from the tax under this subdivision. A claim for a refund
7 for taxes paid before January 1, 1999, under this subdivision shall
8 be made before June 30, 1999. For purposes of this subdivision,
9 tangible personal property that becomes a component part of a
10 newspaper or periodical and consequently not subject to tax
11 includes an advertising supplement inserted into and circulated
12 with a newspaper or periodical that is otherwise exempt from tax
13 under this subdivision, if the advertising supplement is delivered
14 directly to the newspaper or periodical by a person other than the
15 advertiser, or the advertising supplement is printed by the
16 newspaper or periodical.

17 (g) A sale of tangible personal property to persons licensed
18 to operate commercial radio or television stations if the property
19 is used in the origination or integration of the various sources of
20 program material for commercial radio or television transmission.
21 This subdivision does not include a vehicle licensed and titled for
22 use on public highways or property used in the transmission to or
23 receiving from an artificial satellite.

24 (h) The sale of a prosthetic device, durable medical
25 equipment, or mobility enhancing equipment.

26 (i) The sale of a vehicle not for resale to a Michigan
27 nonprofit corporation organized exclusively to provide a community

1 with ambulance or fire department services.

2 (j) A sale of tangible personal property to inmates in a penal
3 or correctional institution purchased with scrip or its equivalent
4 issued and redeemed by the institution.

5 (k) A sale of textbooks sold by a public or nonpublic school
6 to or for the use of students enrolled in any part of a
7 kindergarten through twelfth grade program.

8 (l) ~~A~~ **BEFORE OCTOBER 1, 2007, A** sale of tangible personal
9 property installed as a component part of a water pollution control
10 facility for which a tax exemption certificate is issued pursuant
11 to part 37 of the natural resources and environmental protection
12 act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution
13 control facility for which a tax exemption certificate is issued
14 pursuant to part 59 of the natural resources and environmental
15 protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

16 (m) The sale or lease of the following to an industrial
17 laundry after December 31, 1997:

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

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

26 (iii) Machinery, equipment, parts, lubricants, and repair
27 services used to clean, process, and package textiles and related

1 items, whether owned or leased.

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

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

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

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

9 (n) A sale of tangible personal property to a person holding a
10 direct payment permit under section 8 of the use tax act, 1937 PA
11 94, MCL 205.98.

12 (2) The tangible personal property under subsection (1) is
13 exempt only to the extent that that property is used for the exempt
14 purpose if one is stated in subsection (1). The exemption is
15 limited to the percentage of exempt use to total use determined by
16 a reasonable formula or method approved by the department.

17 Sec. 4g. (1) The following are exempt from the tax under this
18 act:

19 (a) Sales of drugs for human use that can only be legally
20 dispensed by prescription or food or food ingredients, except
21 prepared food intended for immediate human consumption **AND, AFTER**
22 **OCTOBER 1, 2007, FOOD AND FOOD INGREDIENTS SOLD FROM A VENDING**
23 **MACHINE.**

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 under
2 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 and
7 proper application for authorization to accept food stamps but has
8 been denied authorization and provides proof of denial to the
9 department of treasury.

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

12 (2) ~~Food~~ **BEFORE OCTOBER 1, 2007, FOOD** or drink heated or
13 cooled mechanically, electrically, or by other artificial means to
14 an average temperature above 75 degrees Fahrenheit or below 65
15 degrees Fahrenheit before sale and sold from a vending machine,
16 except milk, nonalcoholic beverages in a sealed container, and
17 fresh fruit, is subject to the tax under this act. The tax due
18 under 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 based on 1 of the following as
21 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 do
3 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, or
11 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 2001
19 food code published by the food and drug administration of the
20 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 **HUMAN** consumption"
2 means prepared food **AND, AFTER OCTOBER 1, 2007, FOOD AND FOOD**
3 **INGREDIENTS SOLD FROM A VENDING MACHINE.**

4 Sec. 4i. (1) As used in this section, "bad debt" means any
5 portion of a debt that is related to a sale at retail taxable under
6 this act for which gross proceeds are not otherwise deductible or
7 excludable and that is eligible to be claimed, or could be eligible
8 to be claimed if the taxpayer kept accounts on an accrual basis, as
9 a deduction pursuant to section 166 of the internal revenue code,
10 26 USC 166. A bad debt shall not include any finance charge,
11 interest, or sales tax on the purchase price, uncollectible amounts
12 on property that remains in the possession of the taxpayer until
13 the full purchase price is paid, expenses incurred in attempting to
14 collect any account receivable or any portion of the debt
15 recovered, any accounts receivable that have been sold to and
16 remain in the possession of a third party for collection, and
17 repossessed property.

18 (2) In computing the amount of tax levied under this act for
19 any month, **BEFORE OCTOBER 1, 2007**, a taxpayer may deduct the amount
20 of bad debts from his or her gross proceeds used for the
21 computation of the tax. The amount of gross proceeds deducted must
22 be charged off as uncollectible on the books and records of the
23 taxpayer at the time the debt becomes worthless and deducted on the
24 return for the period during which the bad debt is written off as
25 uncollectible in the claimant's books and records and must be
26 eligible to be deducted for federal income tax purposes. For
27 purposes of this section, **BEFORE OCTOBER 1, 2007**, a claimant who is

1 not required to file a federal income tax return may deduct a bad
2 debt on a return filed for the period in which the bad debt becomes
3 worthless and is written off as uncollectible in the claimant's
4 books and records and would be eligible for a bad debt deduction
5 for federal income tax purposes if the claimant was required to
6 file a federal income tax return. If a consumer or other person
7 pays all or part of a bad debt with respect to which a taxpayer
8 claimed a deduction under this section, the taxpayer is liable for
9 the amount of taxes deducted in connection with that portion of the
10 debt for which payment is received and shall remit these taxes in
11 his or her next payment to the department. Any payments made on a
12 bad debt shall be applied proportionally first to the taxable price
13 of the property and the tax on the property and second to any
14 interest, service, or other charge.

15 (3) Any claim for a bad debt deduction under this section
16 shall be supported by that evidence required by the department. The
17 department shall review any change in the rate of taxation
18 applicable to any taxable sales by a taxpayer claiming a deduction
19 pursuant to this section and shall ensure that the deduction on any
20 bad debt does not result in the taxpayer claiming the deduction
21 recovering any more or less than the taxes imposed on the sale that
22 constitutes the bad debt.

23 (4) If a certified service provider assumed filing
24 responsibility under the streamlined sales and use tax
25 administration act, **2004 PA 174, MCL 205.801 TO 205.833**, the
26 certified service provider may, **BEFORE OCTOBER 1, 2007**, claim, on
27 behalf of the taxpayer, any bad debt allowable to the taxpayer and

1 shall credit or refund that amount of bad debt allowed or refunded
2 to the taxpayer.

3 (5) If the books and records of a taxpayer under the
4 streamlined sales and use tax agreement **UNDER THE STREAMLINED SALES**
5 **AND USE TAX ADMINISTRATION ACT, 2004 PA 174, MCL 205.801 TO**
6 **205.833**, that claims a bad debt allowance support an allocation of
7 the bad debts among member states of that agreement, the taxpayer
8 may allocate the bad debts.

9 Sec. 4m. ~~A-BEFORE OCTOBER 1, 2007, A~~ sale of rail freight or
10 passenger cars, locomotives or other rolling stock, roadway
11 machines and work equipment primarily of a flanged wheel nature,
12 accessories, attachments including parts and materials used for
13 repair, lubricants, or fuel, used in rail operations is exempt from
14 the tax under this act. This exemption does not include vehicles
15 licensed and titled for use on public highways.

16 Sec. 4r. (1) All of the following are exempt from the tax
17 under this act:

18 (a) ~~The-BEFORE OCTOBER 1, 2007, THE~~ product of the out-of-
19 state usage percentage and the gross proceeds otherwise taxable
20 under this act from the sale of a qualified truck or a trailer
21 designed to be drawn behind a qualified truck, purchased after
22 December 31, 1996 and before May 1, 1999 by an interstate motor
23 carrier and used in interstate commerce.

24 (b) ~~A-BEFORE OCTOBER 1, 2007, A~~ sale of rolling stock
25 purchased by an interstate motor carrier or for rental or lease to
26 an interstate motor carrier and used in interstate commerce.

27 (2) As used in this section:

1 (a) "Interstate motor carrier" means a person engaged in the
2 business of carrying persons or property, other than themselves,
3 their employees, or their own property, for hire across state
4 lines, whose fleet mileage was driven at least 10% outside of this
5 state in the immediately preceding tax year.

6 (b) "Out-of-state usage percentage" is a fraction, the
7 numerator of which is the number of miles driven outside of this
8 state in the immediately preceding tax year by qualified trucks
9 used by the interstate motor carrier and the denominator of which
10 is the total miles driven in the immediately preceding tax year by
11 qualified trucks used by the interstate motor carrier. Miles driven
12 by qualified trucks used solely in intrastate commerce shall not be
13 included in calculating the out-of-state usage percentage.

14 (c) "Qualified truck" means a commercial motor vehicle power
15 unit that has 2 axles and a gross vehicle weight rating in excess
16 of 10,000 pounds or a commercial motor vehicle power unit that has
17 3 or more axles.

18 (d) "Rolling stock" means a qualified truck, a trailer
19 designed to be drawn behind a qualified truck, and parts affixed to
20 either a qualified truck or a trailer designed to be drawn behind a
21 qualified truck.

22 Sec. 4t. (1) The sale of tangible personal property to the
23 following after March 30, 1999, subject to subsection (2) are
24 exempt from the tax under this act:

25 (a) An industrial processor for use or consumption in
26 industrial processing.

27 (b) A person, whether or not the person is an industrial

1 processor, if the tangible personal property is intended for
2 ultimate use in and is used in industrial processing by an
3 industrial processor.

4 (c) A person, whether or not the person is an industrial
5 processor, if the tangible personal property is used by that person
6 to perform an industrial processing activity for or on behalf of an
7 industrial processor.

8 (d) ~~A~~ **BEFORE OCTOBER 1, 2007, A** person, whether or not the
9 person is an industrial processor, if the tangible personal
10 property is 1 of the following:

11 (i) A computer used in operating industrial processing
12 equipment.

13 (ii) Equipment used in a computer assisted manufacturing
14 system.

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

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

19 (v) Computer equipment used in connection with the computer
20 assisted production, storage, and transmission of data if the
21 equipment would have been exempt had the data transfer been made
22 using tapes, disks, CD-ROMs, or similar media by a company whose
23 business includes publishing doctoral dissertations and information
24 archiving, and that sells the majority of the company's products to
25 nonprofit organizations exempt under section 4q.

26 (vi) Equipment used in the production of prewritten computer
27 software or software modified or adapted to the user's needs or

1 equipment by the seller, only if the software is available for sale
2 from a seller of software on an as-is basis or as an end product
3 without modification or adaptation.

4 (2) The property under subsection (1) is exempt only to the
5 extent that the property is used for the exempt purpose stated in
6 this section. The exemption is limited to the percentage of exempt
7 use to total use determined by a reasonable formula or method
8 approved by the department.

9 (3) Industrial processing includes the following activities:

10 (a) Production or assembly.

11 (b) Research or experimental activities.

12 (c) Engineering related to industrial processing.

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

17 (e) Planning, scheduling, supervision, or control of
18 production or other exempt activities.

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

21 (g) Remanufacturing.

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

24 (i) Recycling of used materials for ultimate sale at retail or
25 reuse.

26 (j) Production material handling.

27 (k) Storage of in-process materials.

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

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

5 (b) Machinery, equipment, tools, dies, patterns, foundations
6 for machinery or equipment, or other processing equipment used in
7 an industrial processing activity and in their repair and
8 maintenance.

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

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

15 (e) Fuel or energy used or consumed for an industrial
16 processing activity.

17 (f) Machinery, equipment, or materials used within a plant
18 site or between plant sites operated by the same person for
19 movement of tangible personal property in the process of
20 production.

21 (g) Office equipment, including data processing equipment,
22 used for an industrial processing activity.

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

25 (a) Tangible personal property permanently affixed and
26 becoming a structural part of real estate including building
27 utility systems such as heating, air conditioning, ventilating,

1 plumbing, lighting, and electrical distribution, to the point of
2 the last transformer, switch, valve, or other device at which point
3 usable power, water, gas, steam, or air is diverted from
4 distribution circuits for use in industrial processing.

5 (b) Office equipment, including data processing equipment used
6 for nonindustrial processing purposes.

7 (c) Office furniture or office supplies.

8 (d) An industrial processor's own product or finished good
9 that it uses or consumes for purposes other than industrial
10 processing.

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

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

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

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

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

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

3 (k) Tangible personal property used in the production of
4 computer software originally designed for the exclusive use and
5 special needs of the purchaser.

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

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

9 (b) Sales, distribution, warehousing, shipping, or advertising
10 activities.

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

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

14 (e) Plant security, fire prevention, or medical or hospital
15 services.

16 (7) As used in this section:

17 (a) "Industrial processing" means the activity of converting
18 or conditioning tangible personal property by changing the form,
19 composition, quality, combination, or character of the property for
20 ultimate sale at retail or for use in the manufacturing of a
21 product to be ultimately sold at retail. Industrial processing
22 begins when tangible personal property begins movement from raw
23 materials storage to begin industrial processing and ends when
24 finished goods first come to rest in finished goods inventory
25 storage.

26 (b) "Industrial processor" means a person who performs the
27 activity of converting or conditioning tangible personal property

1 for ultimate sale at retail or use in the manufacturing of a
2 product to be ultimately sold at retail.

3 (c) "Product", as used in subdivision (e), includes, but is
4 not limited to, a prototype, pilot model, process, formula,
5 invention, technique, patent, or similar property, whether intended
6 to be used in a trade or business or to be sold, transferred,
7 leased, or licensed.

8 (d) "Remanufacturing" means the activity of overhauling,
9 retrofitting, fabricating, or repairing a product or its component
10 parts for ultimate sale at retail.

11 (e) "Research or experimental activity" means activity
12 incident to the development, discovery, or modification of a
13 product or a product related process. Research or experimental
14 activity also includes activity necessary for a product to satisfy
15 a government standard or to receive government approval. Research
16 or experimental activity does not include the following:

17 (i) Ordinary testing or inspection of materials or products for
18 quality control purposes.

19 (ii) Efficiency surveys.

20 (iii) Management surveys.

21 (iv) Market or consumer surveys.

22 (v) Advertising or promotions.

23 (vi) Research in connection with literacy, historical, or
24 similar projects.

25 Sec. 4x. (1) A sale to a domestic air carrier of 1 or more of
26 the following is exempt from the tax under this act:

27 (a) An aircraft that has a maximum certificated takeoff weight

1 of at least 6,000 pounds for use solely in the transport of air
2 cargo, passengers, or a combination of air cargo and passengers.

3 (b) ~~Parts~~ **BEFORE OCTOBER 1, 2007, PARTS** and materials,
4 excluding shop equipment or fuel, affixed or to be affixed to an
5 aircraft that has a maximum certificated takeoff weight of at least
6 6,000 pounds for use solely in the transport of air cargo,
7 passengers, or a combination of air cargo and passengers.

8 (2) ~~The~~ **BEFORE OCTOBER 1, 2007, THE** tax levied under this act
9 does not apply to the sale of parts or materials, excluding shop
10 equipment or fuel, affixed or to be affixed to an aircraft that
11 meets all of the following conditions:

12 (a) The aircraft leaves this state within 15 days after the
13 sooner of the issuance of the final billing or authorized approval
14 for final return to service, completion of the maintenance record
15 entry, and completion of the test flight and ground test for
16 inspection as required under 14 CFR 91.407.

17 (b) The aircraft was not based in this state or registered in
18 this state before the parts or materials are affixed to the
19 aircraft and the aircraft is not based in this state or registered
20 in this state after the parts or materials are affixed to the
21 aircraft.

22 (3) The tax levied under this act does not apply to the sale
23 of an aircraft temporarily located in this state for the purpose of
24 prepurchase evaluation or the purpose of prepurchase evaluation and
25 postsale customization if all of the following conditions are
26 satisfied:

27 (a) The aircraft leaves this state within 15 days after

1 authorized approval for final return to service, completion of the
2 maintenance record entry, and completion of the test flight and
3 ground test for inspection as required under 14 CFR 91.407.

4 (b) The aircraft was not based in this state or registered in
5 this state before the prepurchase evaluation or prepurchase
6 evaluation and postsale customization are completed and the
7 aircraft is not based in this state or registered in this state
8 after the prepurchase evaluation or prepurchase evaluation and
9 postsale customization are completed.

10 (4) A sale of an aircraft to a person for subsequent lease to
11 a domestic air carrier operating under a certificate issued by the
12 federal aviation administration under 14 CFR 121, for use solely in
13 the regularly scheduled transport of passengers is exempt from the
14 tax under this act.

15 (5) As used in this section:

16 (a) "Based in this state" means hangared or stored in this
17 state for not less than 10 days in not less than 3 nonconsecutive
18 months during the immediately preceding 12-month period.

19 (b) "Domestic air carrier" is limited to entities engaged
20 primarily in the commercial transport for hire of air cargo,
21 passengers, or a combination of air cargo and passengers as a
22 business activity.

23 (c) "Prepurchase evaluation" means an examination of an
24 aircraft to provide a potential purchaser with information relevant
25 to the potential purchase.

26 (d) "Postsale customization" means any improvement,
27 maintenance, or repair that is performed on an aircraft following a

1 transfer of ownership of the aircraft.

2 (e) "Registered in this state" means an aircraft registered
3 with the state transportation department, bureau of aeronautics or
4 registered with the federal aviation administration to an address
5 located in this state.

6 Sec. 4aa. (1) ~~The~~ **BEFORE OCTOBER 1, 2007, THE** tax under this
7 act does not apply to the sale of a motor vehicle, recreational
8 watercraft, snowmobile, or all terrain vehicle, not for resale, to
9 a resident tribal member if the motor vehicle, recreational
10 watercraft, snowmobile, or all terrain vehicle is for personal use
11 and is principally garaged, berthed, or stored within that resident
12 tribal member's tribe agreement area.

13 (2) The tax under this act does not apply to the sale of a
14 mobile home, not for resale, to a resident tribal member if the
15 mobile home is to be used as that resident tribal member's
16 principal residence and the mobile home is located within that
17 resident tribal member's tribe agreement area.

18 (3) As used in this section, "resident tribal member" means an
19 individual who meets all of the following criteria:

20 (a) Is an enrolled member of a federally recognized tribe.

21 (b) The individual's tribe has an agreement with this state
22 pursuant to section 30c of 1941 PA 122, MCL 205.30c, that is in
23 full force and effect.

24 (c) The individual's principal place of residence is located
25 within the agreement area as designated in the agreement under
26 subdivision (b).

27 Sec. 6a. (1) At the time of purchase or shipment from a

1 refiner, pipeline terminal operator, or marine terminal operator, a
2 purchaser or receiver of gasoline shall prepay a portion of the tax
3 imposed by this act at the rate provided in this section to the
4 refiner, pipeline terminal operator, or marine terminal operator
5 for the purchase or receipt of gasoline. If the purchase or receipt
6 of gasoline is made outside this state for shipment into and
7 subsequent sale within this state, the purchaser or receiver, other
8 than a refiner, pipeline terminal operator, or marine terminal
9 operator, shall make the prepayment required by this section
10 directly to the department. Prepayments shall be made at a cents
11 per gallon rate determined by the department and shall be based on
12 6% of the statewide average retail price of a gallon of self-serve
13 unleaded regular gasoline as determined and certified by the
14 department rounded up to the nearest 1/10 of 1 cent. A person who
15 makes prepayments direct to the department shall make those
16 prepayments according to the schedule in subsection (5).

17 (2) The rate of prepayment applied pursuant to subsection (1)
18 shall be determined every 6 months by the department unless the
19 department certifies that the change in the statewide average
20 retail price of a gallon of self-serve unleaded regular gasoline
21 has been less than 10% during the 6-month period. However, the rate
22 shall be determined not less than annually.

23 (3) A person subject to tax under this act who makes
24 prepayment to another person as required by this section may claim
25 an estimated prepayment credit on its regular monthly return filed
26 pursuant to section 6. The credit shall be for prepayments made
27 during the month for which the return is required and shall be

1 based upon the difference between prepayments made in the
2 immediately preceding month and collections of prepaid tax received
3 from sales or transfers. A sale or transfer for which collection of
4 prepaid tax is due the taxpayer is subject to a bad debt deduction
5 under section 4i, whether or not the sale or transfer is a sale at
6 retail. The credit shall not be reduced because of actual
7 shrinkage. A taxpayer who does not, in the ordinary course of
8 business sell gasoline in each month of the year, may, with the
9 approval of the department, base the initial prepayment deduction
10 in each tax year on prepayments made in a month other than the
11 immediately preceding month. ~~Estimated prepayment credits claimed~~
12 ~~with the return due in January 1984 shall be based on the~~
13 ~~taxpayer's retail sales of gasoline in December 1983.~~ The
14 difference in actual prepayments shall be reconciled on the annual
15 return in accordance with procedures prescribed by the department.

16 (4) At the option of the taxpayer the estimated prepayment
17 credit may be claimed on the return required to be filed under ~~Act~~
18 ~~No. 150 of the Public Acts of 1927, being sections 207.101 to~~
19 ~~207.202 of the Michigan Compiled Laws~~ **THE MOTOR FUEL TAX ACT, 2000**
20 **PA 403, MCL 207.1001 TO 207.1170**, instead of a claim for the credit
21 on the return required to be filed under section 6. Prepayments
22 claimed on the motor fuel tax return shall be based on the
23 difference in the prepayments made in the immediately preceding
24 month and collections of prepaid tax received from sales or
25 transfer and shall be for prepayments made in the month in which
26 the return is due. A taxpayer electing an option under this
27 subsection shall be entitled to a deduction under section 4i as

1 permitted by subsection (3). Amounts credited pursuant to this
2 section shall not be deducted from amounts required to be credited
3 to the Michigan transportation fund pursuant to section ~~18b of Act~~
4 ~~No. 150 of the Public Acts of 1927, being section 207.118b of the~~
5 ~~Michigan Compiled Laws~~ **143 OF THE MOTOR FUEL TAX ACT, 2000 PA 403,**
6 **MCL 207.1143.** The department may establish procedures for the
7 election of claims under subsection (3) and this subsection to
8 avoid duplication of claims.

9 (5) Notwithstanding the other provisions for the payment and
10 remitting of tax due under this act, a refiner, pipeline terminal
11 operator, or marine terminal operator shall account for and remit
12 to the department the prepayments received pursuant to this section
13 in accordance with the following schedule:

14 (a) On or before the twenty-fifth of each month, prepayments
15 received after the end of the preceding month and before the
16 sixteenth of the month in which the prepayments are made.

17 (b) On or before the tenth of each month, payments received
18 after the fifteenth and before the end of the preceding month.

19 (6) A refiner, pipeline terminal operator, or marine terminal
20 operator who fails to remit prepayments made by a purchaser or
21 receiver of gasoline is subject to the penalties provided by ~~Act~~
22 ~~No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31~~
23 ~~of the Michigan Compiled Laws~~ **1941 PA 122, MCL 205.1 TO 205.31.**

24 (7) The refiner, pipeline terminal operator, or marine
25 terminal operator shall not receive a deduction under section 4 for
26 receiving and remitting prepayments from a purchaser or receiver
27 pursuant to this section.

1 (8) The purchaser or receiver of gasoline who makes
2 prepayments is not subject to further liability for the amount of
3 the prepayment if the refiner, pipeline terminal operator, or
4 marine terminal operator fails to remit the prepayment.

5 (9) As used in this section:

6 (a) "Marine terminal operator" means a person who stores
7 gasoline at a boat terminal transfer defined as a dock, a tank, or
8 equipment contiguous to a dock or a tank, including equipment used
9 in the unloading of gasoline from a ship and in transferring the
10 gasoline to a tank pending wholesale bulk reshipment.

11 (b) "Pipeline terminal operator" means a person who stores
12 gasoline in tanks and equipment used in receiving and storing
13 gasoline from interstate and intrastate pipelines pending wholesale
14 bulk reshipment.

15 (c) "Purchase" or "shipment" does not include an exchange of
16 gasoline, or an exchange transaction, between refiners, pipeline
17 terminal operators, or marine terminal operators.

18 (d) "Refiner" means a person who manufactures or produces
19 gasoline by any process involving substantially more than the
20 blending of gasoline.