

HOUSE BILL No. 5419

September 17, 2009, Introduced by Rep. Meadows and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 3a (MCL 205.93a), as amended by 2008 PA 439.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 (a) Except as provided in section 3b, intrastate
5 telecommunications services that both originate and terminate in
6 this state, including, but not limited to, intrastate private
7 communications services, ancillary services, conference bridging
8 service, **FIXED WIRELESS SERVICE, 800 SERVICE, 900 service**, pay
9 telephone service other than coin-operated telephone service, and

1 value-added nonvoice data service, but excluding ~~800 service, coin-~~
2 operated telephone service, ~~fixed wireless service, 1-way~~ paging
3 service, prepaid calling service, telecommunications nonrecurring
4 charges, and directory advertising proceeds.

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

22 (c) Except as provided in section 3b, interstate **OR**
23 **INTERNATIONAL** telecommunications services that either originate or
24 terminate in this state and for which the charge for the service is
25 billed to a service address in this state or phone number by the
26 provider either within or outside this state including, but not
27 limited to, ancillary services, conference bridging service,

1 **PRIVATE COMMUNICATIONS SERVICE, FIXED WIRELESS SERVICE, 800**
 2 **SERVICE,** 900 service, pay telephone service other than coin-
 3 operated telephone service, and value-added nonvoice data services,
 4 but excluding ~~interstate private communications service, 800~~
 5 ~~service,~~ coin-operated telephone service, ~~fixed wireless service,~~
 6 1-way paging service, prepaid calling service, **AND**
 7 telecommunications nonrecurring charges. ~~and international~~
 8 ~~telecommunications service.~~

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

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

20 (f) For a manufacturer who affixes its product to real estate
 21 and maintains an inventory of its product that is available for
 22 sale to others or who makes its product available for sale to
 23 others by publication or price list, the direct production costs
 24 and indirect production costs of the product affixed to the real
 25 estate that are incident to and necessary for production or
 26 manufacturing operations or processes, as defined by the
 27 department.

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

9 (2) 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 charges for
13 telecommunications services that are subject to the tax under this
14 act, the nontaxable telecommunications services and other
15 nontaxable billed services are subject to the tax under this act
16 unless the service provider can reasonably identify charges for
17 telecommunications services not subject to the tax under this act
18 from its books and records that are kept in the regular course of
19 business.

20 (3) If charges for intrastate telecommunications services or
21 telecommunications services between this state and another state
22 and other billed services not subject to the tax under this act are
23 aggregated with and not separately stated from telecommunications
24 services that are subject to the tax under this act, a customer may
25 not rely upon the nontaxability of those telecommunications
26 services and other billed services unless the customer's service
27 provider separately states the charges for nontaxable

1 telecommunications services and other nontaxable billed services
2 from taxable telecommunications services or the service provider
3 elects, after receiving a written request from the customer in the
4 form required by the provider, to provide verifiable data based
5 upon the service provider's books and records that are kept in the
6 regular course of business that reasonably identify the nontaxable
7 services.

8 (4) All of the following apply in the case of a bundled
9 transaction that includes telecommunications service, ancillary
10 service, internet access, or audio or video programming:

11 (a) If the purchase price is attributable to products that are
12 taxable and products that are nontaxable, the portion of the
13 purchase price attributable to the nontaxable products may be
14 subject to tax unless the provider can identify by reasonable and
15 verifiable standards that portion from its books and records that
16 are kept in the regular course of business for other purposes,
17 including, but not limited to, nontax purposes.

18 (b) The provisions of this subsection apply unless otherwise
19 provided by federal law.

20 (5) As used in this section:

21 (a) "Ancillary services" means services that are associated
22 with or incidental to the provision of telecommunications services,
23 including, but not limited to, detailed telecommunications billing,
24 directory assistance, vertical service, and voice mail services.

25 (b) "Bundled transaction" means the purchase of 2 or more
26 distinct and identifiable products, except real property and
27 services to real property, where the products are sold for a single

1 nonitemized price. A bundled transaction does not include the sale
2 of any products in which the sales price varies, or is negotiable,
3 based on the selection by the purchaser of the products included in
4 the transaction. As used in this subdivision:

5 (i) "Distinct and identifiable products" does not include any
6 of the following:

7 (A) Packaging, such as containers, boxes, sacks, bags, and
8 bottles or other materials such as wrapping, labels, tags, and
9 instruction guides, that accompany the purchase of the products and
10 are incidental or immaterial to the purchase of the products,
11 including grocery sacks, shoeboxes, dry cleaning garment bags, and
12 express delivery envelopes and boxes.

13 (B) A product provided free of charge with the required
14 purchase of another product. A product is provided free of charge
15 if the sales price of the product purchased does not vary depending
16 on the inclusion of the product provided free of charge.

17 (C) Items included in purchase price.

18 (ii) "Purchase price" means the price paid by the seller for
19 the property.

20 (iii) "Sales price" means that term as defined in section 1 of
21 the general sales tax act, 1933 PA 167, MCL 205.51.

22 (iv) "Single nonitemized price" does not include a price that
23 is separately identified by product on binding sales or other
24 supporting sales-related documentation made available to the
25 purchaser in paper or electronic form, including, but not limited
26 to, an invoice, bill of sale, receipt, contract, service agreement,
27 lease agreement, periodic notice of rates and services, rate card,

1 or price list.

2 (v) Bundled transaction does not include any of the following:

3 (A) The purchase of tangible personal property and a service
4 if the tangible personal property is essential to the use of the
5 service and is provided exclusively in connection with the service
6 and the true object of the transaction is the service.

7 (B) The purchase of services if 1 service is provided that is
8 essential to the use or receipt of a second service and the first
9 service is provided exclusively in connection with the second
10 service and the true object of the transaction is the second
11 service.

12 (C) A transaction that includes taxable and nontaxable
13 products and the purchase price of the taxable products is de
14 minimis. As used in this sub-subparagraph, "de minimis" means the
15 seller's purchase price or sales price of the taxable products is
16 10% or less of the total purchase price or sales price of the
17 products. A seller shall use the full term of a service contract to
18 determine if the taxable products are de minimis. A seller shall
19 use either the purchase price or the sales price of the products to
20 determine if the taxable products are de minimis. A seller shall
21 not use a combination of the purchase price and sales price of the
22 products to determine if the taxable products are de minimis.

23 (D) The retail sale of exempt tangible personal property and
24 taxable tangible personal property if all of the following
25 conditions are satisfied:

26 (I) The transaction includes food and food ingredients,
27 prescription or over-the-counter drugs, durable medical equipment,

1 mobility enhancing equipment, medical supplies, or prosthetic
2 devices.

3 (II) Where the seller's purchase price or sales price of the
4 taxable tangible personal property is 50% or less of the total
5 purchase price or sales price of the bundled tangible personal
6 property. A seller may not use a combination of the purchase price
7 and sales price of the tangible personal property when making the
8 50% determination for a transaction.

9 (c) "Coin-operated telephone service" means a
10 telecommunications service paid for by inserting money into a
11 telephone that accepts direct deposits of money to operate.

12 (d) "Conference bridging service" means an ancillary service
13 that links 2 or more participants of an audio or video conference
14 call and may include the provision of a telephone number, but does
15 not include the telecommunications services used to reach the
16 conference bridge.

17 (e) "Detailed telecommunications billing service" means an
18 ancillary service of separately stating information pertaining to
19 individual calls on a customer's billing statement.

20 (f) "Directory assistance" means an ancillary service of
21 providing telephone number information or address information.

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

24 (h) "Fixed wireless service" means a telecommunications
25 service that provides radio communication between fixed points.

26 (i) "International" means a telecommunications service that
27 originates or terminates in the United States and terminates or

1 originates outside the United States, respectively. United States
2 includes the District of Columbia and any possession or territory
3 of the United States.

4 (j) "Interstate" means a telecommunications service that
5 originates in 1 United States state, territory, or possession and
6 terminates in a different United States state, territory, or
7 possession.

8 (k) "Intrastate" means a telecommunications service that
9 originates in a United States state, territory, or possession and
10 terminates in the same United States state, territory, or
11 possession.

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

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

17 (n) "Paging service" means a telecommunications service that
18 provides transmission of coded radio signals for the purpose of
19 activating specific pagers, which may include messages or sounds.

20 (o) "Pay telephone service" means a telecommunications service
21 provided through any pay telephone.

22 (p) "Prepaid calling service" means the right to access
23 exclusively telecommunications services that must be paid for in
24 advance and that enables the origination of calls using an access
25 number or authorization code, whether manually or electronically
26 dialed, and that is sold in predetermined units or dollars that
27 decline with use in a known amount.

1 (q) "Private communications service" means a
2 telecommunications service that entitles the customer to exclusive
3 or priority use of a communications channel or group of channels
4 between or among termination points, regardless of the manner in
5 which that channel or group of channels are connected, and includes
6 switching capacity, extension lines, stations, and any other
7 associated services that are provided in connection with the use of
8 that channel or group of channels.

9 (r) "Telecommunications nonrecurring charges" means an amount
10 billed for the installation, connection, change, or initiation of
11 telecommunications service received by the customer.

12 (s) "Telecommunications service" means the electronic
13 transmission, conveyance, or routing of voice, data, audio, video,
14 or any other information or signals to a point, or between or among
15 points, including a transmission, conveyance, or routing in which
16 computer processing applications are used to act on the form, code,
17 or protocol of the content for purposes of transmission,
18 conveyance, or routing without regard to whether that service is
19 referred to as voice over internet protocol services or is
20 classified by the federal communications commission as enhanced or
21 value added. Telecommunications service does not include any of the
22 following:

23 (i) Data processing and information services that allow data to
24 be generated, acquired, stored, processed, or retrieved and
25 delivered by an electronic transmission to a purchaser where the
26 purchaser's primary purpose for the underlying transaction is the
27 processed data or information.

1 (ii) Installation or maintenance of wiring or equipment on a
2 customer's premises.

3 (iii) Tangible personal property.

4 (iv) Advertising, including, but not limited to, directory
5 advertising.

6 (v) Billing and collection services provided to third parties.

7 (vi) Internet access service.

8 (vii) Radio and television audio and video programming
9 services, including, but not limited to, cable service as defined
10 in 47 USC 522(6) and audio and video programming services delivered
11 by commercial mobile radio service providers as defined in 47 CFR
12 20.3, regardless of the medium, including the furnishing of
13 transmission, conveyance, and routing of those services by the
14 programming service provider.

15 (viii) Ancillary services.

16 (ix) Answering services, if the primary purpose of the
17 transaction is the answering service rather than message
18 transmission.

19 (x) Digital products delivered electronically, including, but
20 not limited to, software, music, video, reading materials, or ring
21 tones.

22 (t) "Value-added nonvoice data service" means a
23 telecommunications service in which computer processing
24 applications are used to act on the form, content, code, or
25 protocol of the information or data primarily for a purpose other
26 than transmission, conveyance, or routing.

27 (u) "Vertical service" means an ancillary service that is

1 offered in connection with 1 or more telecommunications services
2 that offers advanced calling features that allow customers to
3 identify callers and to manage multiple calls and call connections,
4 including conference bridging services.

5 (v) "Voice mail service" means an ancillary service that
6 enables the customer to store, send, or receive recorded messages,
7 but does not include any vertical services that the customer may be
8 required to have in order to utilize the voice mail service.

9 (w) "800 service" means a telecommunications service that
10 allows a caller to dial a toll-free number without incurring a
11 charge for the call, typically marketed under the designation
12 "800", "855", "866", "877", or "888" toll-free calling, or any
13 subsequent number designated by the federal communications
14 commission.

15 (x) "900 service" means an inbound toll telecommunications
16 service purchased by a subscriber that allows the subscriber's
17 customers to call in to the subscriber's prerecorded announcement
18 or live service, typically marketed under the designation "900"
19 service, and any subsequent number designated by the federal
20 communications commission, but does not include a charge for
21 collection services provided by the seller of the
22 telecommunications services to the subscriber, or the service or
23 product sold by the subscriber to the subscriber's customer.

24 Enacting section 1. This amendatory act takes effect October
25 1, 2009.