

HOUSE BILL No. 5528

October 20, 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 sections 4 and 20 (MCL 205.94 and 205.110), section 4
as amended by 2008 PA 314 and section 20 as added by 2004 PA 172,
and by adding sections 3g and 4b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3G. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT,
2 BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
3 THIS SECTION, THE USE OR CONSUMPTION OF ALL SERVICES IN THIS STATE
4 SHALL BE TAXED UNDER THIS ACT IN THE SAME MANNER AS TANGIBLE
5 PERSONAL PROPERTY IS TAXED UNDER THIS ACT.

6 (2) SERVICES SUBJECT TO THE TAX UNDER THIS ACT AS PROVIDED IN
7 THIS SECTION SHALL BE SOURCED UNDER SECTION 20.

8 Sec. 4. (1) The following are exempt from the tax levied under

1 this act, subject to subsection (2):

2 (a) Property **OR SERVICES** sold in this state on which
3 transaction a tax is paid under the general sales tax act, 1933 PA
4 167, MCL 205.51 to 205.78, if the tax was due and paid on the
5 retail sale to a consumer.

6 (b) Property **OR SERVICES**, the storage, use, or other
7 consumption of which this state is prohibited from taxing under the
8 constitution or laws of the United States, or under the
9 constitution of this state.

10 (c) All of the following:

11 (i) Property purchased for resale. Property purchased for
12 resale includes promotional merchandise transferred pursuant to a
13 redemption offer to a person located outside this state or any
14 packaging material, other than promotional merchandise, acquired
15 for use in fulfilling a redemption offer or rebate to a person
16 located outside this state.

17 (ii) Property purchased for lending or leasing to a public or
18 parochial school offering a course in automobile driving except
19 that a vehicle purchased by the school shall be certified for
20 driving education and shall not be reassigned for personal use by
21 the school's administrative personnel.

22 (iii) Property purchased for demonstration purposes. For a new
23 vehicle dealer selling a new car or truck, exemption for
24 demonstration purposes shall be determined by the number of new
25 cars and trucks sold during the current calendar year or the
26 immediately preceding calendar year, without regard to specific
27 make or style, according to the following schedule but not to

1 exceed 25 cars and trucks in 1 calendar year for demonstration
2 purposes:

3 (A) 0 to 25, 2 units.

4 (B) 26 to 100, 7 units.

5 (C) 101 to 500, 20 units.

6 (D) 501 or more, 25 units.

7 (iv) Motor vehicles purchased for resale purposes by a new
8 vehicle dealer licensed under section 248(8)(a) of the Michigan
9 vehicle code, 1949 PA 300, MCL 257.248.

10 (d) Property that is brought into this state by a nonresident
11 person for storage, use, or consumption while temporarily within
12 this state, except if the property is used in this state in a
13 nontransitory business activity for a period exceeding 15 days.

14 (e) Property **OR SERVICES** the sale or use of which was already
15 subjected to a sales tax or use tax equal to, or in excess of, that
16 imposed by this act under the law of any other state or a local
17 governmental unit within a state if the tax was due and paid on the
18 retail sale to the consumer and the state or local governmental
19 unit within a state in which the tax was imposed accords like or
20 complete exemption on property the sale or use of which was
21 subjected to the sales or use tax of this state. If the sale or use
22 of property **OR SERVICES** was already subjected to a tax under the
23 law of any other state or local governmental unit within a state in
24 an amount less than the tax imposed by this act, this act shall
25 apply, but at a rate measured by the difference between the rate
26 provided in this act and the rate by which the previous tax was
27 computed.

(f) Property **OR SERVICES** sold to a person engaged in a business enterprise and using and consuming the property in the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth. This exemption includes machinery that is capable of simultaneously harvesting grain or other crops and biomass and machinery used for the purpose of harvesting biomass. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land used in the production of agricultural products as a business enterprise and includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption does not include transfers of food, fuel, clothing, or similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed to and becoming a structural part of real estate. As used in this subdivision, "biomass" means crop residue used to produce energy or agricultural crops grown specifically for the production of energy.

(g) Property or services sold to the United States, an unincorporated agency or instrumentality of the United States, an incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American red cross and its chapters or branches,

1 this state, a department or institution of this state, or a
2 political subdivision of this state.

3 (h) Property or services sold to a school, hospital, or home
4 for the care and maintenance of children or aged persons, operated
5 by an entity of government, a regularly organized church,
6 religious, or fraternal organization, a veterans' organization, or
7 a corporation incorporated under the laws of this state, if not
8 operated for profit, and if the income or benefit from the
9 operation does not inure, in whole or in part, to an individual or
10 private shareholder, directly or indirectly, and if the activities
11 of the entity or agency are carried on exclusively for the benefit
12 of the public at large and are not limited to the advantage,
13 interests, and benefits of its members or a restricted group. The
14 tax levied does not apply to property or services sold to a parent
15 cooperative preschool. As used in this subdivision, "parent
16 cooperative preschool" means a nonprofit, nondiscriminatory
17 educational institution, maintained as a community service and
18 administered by parents of children currently enrolled in the
19 preschool that provides an educational and developmental program
20 for children younger than compulsory school age, that provides an
21 educational program for parents, including active participation
22 with children in preschool activities, that is directed by
23 qualified preschool personnel, and that is licensed pursuant to
24 1973 PA 116, MCL 722.111 to 722.128.

25 (i) Property or services sold to a regularly organized church
26 or house of religious worship except the following:

27 (i) Sales in which the property is used in activities that are

1 mainly commercial enterprises.

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

6 (j) A vessel designed for commercial use of registered tonnage
7 of 500 tons or more, if produced upon special order of the
8 purchaser, and bunker and galley fuel, provisions, supplies,
9 maintenance, and repairs for the exclusive use of a vessel of 500
10 tons or more engaged in interstate commerce.

11 (k) Property purchased for use in this state where actual
12 personal possession is obtained outside this state, the purchase
13 price or actual value of which does not exceed \$10.00 during 1
14 calendar month.

15 (l) A newspaper or periodical classified under federal postal
16 laws and regulations effective September 1, 1985 as second-class
17 mail matter or as a controlled circulation publication or qualified
18 to accept legal notices for publication in this state, as defined
19 by law, or any other newspaper or periodical of general
20 circulation, established at least 2 years, and published at least
21 once a week, and a copyrighted motion picture film. Tangible
22 personal property used or consumed in producing a copyrighted
23 motion picture film, a newspaper published more than 14 times per
24 year, or a periodical published more than 14 times per year, and
25 not becoming a component part of that film, newspaper, or
26 periodical is subject to the tax. After December 31, 1993, tangible
27 personal property used or consumed in producing a newspaper

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

16 (m) Property purchased by persons licensed to operate a
17 commercial radio or television station if the property is used in
18 the origination or integration of the various sources of program
19 material for commercial radio or television transmission. This
20 subdivision does not include a vehicle licensed and titled for use
21 on public highways or property used in the transmitting to or
22 receiving from an artificial satellite.

23 (n) A person who is a resident of this state who purchases an
24 automobile in another state while in the military service of the
25 United States and who pays a sales tax in the state where the
26 automobile is purchased.

27 (o) A vehicle for which a special registration is secured in

1 accordance with section 226(9) of the Michigan vehicle code, 1949
2 PA 300, MCL 257.226.

3 (p) The sale of a prosthetic device, durable medical
4 equipment, or mobility enhancing equipment.

5 (q) Water when delivered through water mains, water sold in
6 bulk tanks in quantities of not less than 500 gallons, or the sale
7 of bottled water.

8 (r) A vehicle not for resale used by a nonprofit corporation
9 organized exclusively to provide a community with ambulance or fire
10 department services.

11 (s) Tangible personal property purchased and installed as a
12 component part of a water pollution control facility for which a
13 tax exemption certificate is issued pursuant to part 37 of the
14 natural resources and environmental protection act, 1994 PA 451,
15 MCL 324.3701 to 324.3708, or an air pollution control facility for
16 which a tax exemption certificate is issued pursuant to part 59 of
17 the natural resources and environmental protection act, 1994 PA
18 451, MCL 324.5901 to 324.5908.

19 (t) Tangible real or personal property donated by a
20 manufacturer, wholesaler, or retailer to an organization or entity
21 exempt pursuant to subdivision (h) or (i) or section 4a(1)(a) or
22 (b) of the general sales tax act, 1933 PA 167, MCL 205.54a.

23 (u) The storage, use, or consumption of an aircraft by a
24 domestic air carrier for use solely in the transport of air cargo,
25 passengers, or a combination of air cargo and passengers, that has
26 a maximum certificated takeoff weight of at least 6,000 pounds. For
27 purposes of this subdivision, the term "domestic air carrier" is

1 limited to a person engaged primarily in the commercial transport
2 for hire of air cargo, passengers, or a combination of air cargo
3 and passengers as a business activity. The state treasurer shall
4 estimate on January 1 each year the revenue lost by this act from
5 the school aid fund and deposit that amount into the school aid
6 fund from the general fund.

7 (v) The storage, use, or consumption of an aircraft by a
8 person who purchases the aircraft for subsequent lease to a
9 domestic air carrier operating under a certificate issued by the
10 federal aviation administration under 14 CFR part 121, for use
11 solely in the regularly scheduled transport of passengers.

12 (w) Property or services sold to an organization not operated
13 for profit and exempt from federal income tax under section
14 501(c)(3) or 501(c)(4) of the internal revenue code, 26 USC 501; or
15 to a health, welfare, educational, cultural arts, charitable, or
16 benevolent organization not operated for profit that has been
17 issued before June 13, 1994 an exemption ruling letter to purchase
18 items exempt from tax signed by the administrator of the sales,
19 use, and withholding taxes division of the department. The
20 department shall reissue an exemption letter after June 13, 1994 to
21 each of those organizations that had an exemption letter that shall
22 remain in effect unless the organization fails to meet the
23 requirements that originally entitled it to this exemption. The
24 exemption does not apply to sales of tangible personal property and
25 sales of vehicles licensed for use on public highways, that are not
26 used primarily to carry out the purposes of the organization as
27 stated in the bylaws or articles of incorporation of the exempt

1 organization.

2 (x) The use or consumption of services described in section
3 3a(1)(a) or (b) or 3b by means of a prepaid telephone calling card,
4 a prepaid authorization number for telephone use, or a charge for
5 internet access.

6 (y) The purchase, lease, use, or consumption of the following
7 by an industrial laundry after December 31, 1997:

8 (i) Textiles and disposable products including, but not limited
9 to, soap, paper, chemicals, tissues, deodorizers and dispensers,
10 and all related items such as packaging, supplies, hangers, name
11 tags, and identification tags.

12 (ii) Equipment, whether owned or leased, used to repair and
13 dispense textiles including, but not limited to, roll towel
14 cabinets, slings, hardware, lockers, mop handles and frames, and
15 carts.

16 (iii) Machinery, equipment, parts, lubricants, and repair
17 services used to clean, process, and package textiles and related
18 items, whether owned or leased.

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

20 (v) Production washroom equipment and mending and packaging
21 supplies and equipment.

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

24 (vii) Wastewater pretreatment equipment and supplies and
25 related maintenance and repair services.

26 (2) The property or services under subsection (1) are exempt
27 only to the extent that the property or services are used for the

1 exempt purposes if one is stated in subsection (1). The exemption
2 is limited to the percentage of exempt use to total use determined
3 by a reasonable formula or method approved by the department.

4 **SEC. 4B. BEGINNING JANUARY 1, 2010, THE SALE OF THE FOLLOWING**
5 **SERVICES ARE EXEMPT FROM THE TAX UNDER THIS ACT:**

6 (A) **SERVICES PROVIDED TO A BUSINESS ENTITY.**

7 (B) **EDUCATIONAL SERVICES.**

8 (C) **SERVICES PROVIDED BY A NONPROFIT ORGANIZATION.**

9 (D) **SERVICES PROVIDED BY A PHYSICIAN.**

10 Sec. 20. (1) For sourcing a sale subject to tax under this
11 act, the following apply:

12 (a) If a product **OR SERVICE** is received by the purchaser at a
13 business location of the seller, the sale is sourced to that
14 business location.

15 (b) If a product **OR SERVICE** is not received by the purchaser
16 at a business location of the seller, the sale is sourced to the
17 location where the product **OR SERVICE** is received by the purchaser
18 or the purchaser's designee, including the location indicated by
19 instructions for delivery to the purchaser, known to the seller.

20 (c) If subdivision (a) or (b) does not apply, the sale is
21 sourced to the location indicated by an address for the purchaser
22 available from the seller's business records maintained in the
23 ordinary course of the seller's business, provided use of the
24 address does not constitute bad faith.

25 (d) If subdivisions (a) through (c) do not apply, the sale is
26 sourced to the location indicated by an address for the purchaser
27 obtained at the completion of the sale, including the address of

1 the purchaser's payment instrument if no other address is
2 available, provided use of the address does not constitute bad
3 faith.

4 (e) If subdivisions (a) through (d) do not apply or the seller
5 has insufficient information to apply subdivisions (a) through (d),
6 the sale will be sourced to the location indicated by the address
7 from which the tangible personal property was shipped, **FROM WHICH**
8 **THE SERVICE ORIGINATED**, or from which the computer software
9 delivered electronically was first available for transmission by
10 the seller.

11 (2) For sourcing the lease or rental of tangible personal
12 property, other than property included in subsection (3) or (4),
13 subject to tax under this act, the following apply:

14 (a) For a lease or rental requiring recurring periodic
15 payments, the first payment is sourced in the same manner provided
16 for a sale in subsection (1). Subsequent payments shall be sourced
17 to the primary property location for each period covered by the
18 payment as indicated by the address of the property provided by the
19 lessee and available to the lessor from the lessor's records
20 maintained in the ordinary course of business, when use of this
21 address does not constitute bad faith. The property location is not
22 considered altered by intermittent use at different locations such
23 as business property that accompanies employees on business trips
24 or service calls.

25 (b) For a lease or rental not requiring recurring periodic
26 payments, the payment is sourced in the same manner provided for a
27 sale in subsection (1).

1 (3) For sourcing the lease or rental of motor vehicles,
2 trailers, semitrailers, or aircraft that are not transportation
3 equipment, the following apply:

4 (a) For a lease or rental requiring recurring periodic
5 payments, each payment is sourced to the primary property location
6 as indicated by the address of the property provided by the lessee
7 and available to the lessor from the lessor's records maintained in
8 the ordinary course of business, when use of this address does not
9 constitute bad faith. The property location is not considered
10 altered by intermittent use at a different location.

11 (b) For a lease or rental not requiring recurring periodic
12 payments, the payment is sourced in the same manner provided for a
13 sale in subsection (1).

14 (4) The lease or rental of transportation equipment shall be
15 sourced in the same manner provided for a sale in subsection (1).

16 (5) Subsections (2) and (3) do not affect the imposition or
17 computation of the tax under the general sales tax act, 1933 PA
18 167, MCL 205.51 to 205.78, on leases or rentals based on a lump-sum
19 or accelerated basis or on the acquisition of property for lease.

20 (6) As used in this section:

21 (a) "Receive" and "receipt" mean 1 or more of the following
22 but exclude possession by a shipping company on behalf of the
23 purchaser:

24 (i) Taking possession of tangible personal property.

25 (ii) Making first use of services.

26 (b) "Transportation equipment" means 1 or more of the
27 following:

1 (i) Locomotives and railcars utilized for the carriage of
2 persons or property in interstate commerce.

3 (ii) Trucks and truck-tractors with a gross vehicle weight
4 rating of 10,001 pounds or greater, trailers, semitrailers, or
5 passenger buses, which are registered through the international
6 registration plan and operated under authority of a carrier
7 authorized and certificated by the United States department of
8 transportation or another federal authority to engage in the
9 carriage of persons or property in interstate commerce.

10 (iii) Aircraft operated by air carriers authorized and
11 certificated by the United States department of transportation or
12 other federal or foreign authority to transport air cargo or
13 passengers in interstate or foreign commerce.

14 (iv) Containers designed for use on or component parts attached
15 or secured to the equipment included in subparagraphs (i) to (iii).

16 (7) A person may deviate from the sourcing requirements under
17 this section as provided in section ~~12 or~~ 13.

18 Enacting section 1. This amendatory act does not take effect
19 unless Senate Joint Resolution ____ or House Joint Resolution KK
20 (request no. 04558'09 a) of the 95th Legislature becomes a part of
21 the state constitution of 1963 as provided in section 1 of article
22 XII of the state constitution of 1963.

23 Enacting section 2. This amendatory act does not take effect
24 unless Senate Bill No. ____ or House Bill No. 5529 (request no.
25 05070'09) of the 95th Legislature is enacted into law.