

HOUSE BILL No. 5810

February 16, 2010, Introduced by Reps. Smith and Gregory and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 3 and 20 (MCL 205.93 and 205.110), section 3
as amended by 2007 PA 103 and section 20 as added by 2004 PA 172,
and by adding section 3g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) There is levied upon and there shall be collected
2 from every person in this state a specific tax for the privilege of
3 using, storing, or consuming tangible personal property in this
4 state **AND FOR PROVIDING CERTAIN SERVICES IN THIS STATE** at a ~~THE~~
5 **FOLLOWING** rate:

6 **(A) PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
7 **ADDED SECTION 3G, A RATE** equal to 6% of the price of the property
8 or services ~~specified in section 3a or 3b~~ **SUBJECT TO TAX UNDER THIS**
9 **ACT.**

1 (B) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
2 ADDED SECTION 3G, A RATE EQUAL TO 5.5% OF THE PRICE OF THE PROPERTY
3 OR SERVICES SUBJECT TO TAX UNDER THIS ACT.

4 (2) The tax levied under this act applies to a person who
5 acquires tangible personal property or services that are subject to
6 the tax levied under this act for any tax-exempt use who
7 subsequently converts the tangible personal property or service to
8 a taxable use, including an interim taxable use. If tangible
9 personal property or services are converted to a taxable use, the
10 tax levied under this act shall be imposed without regard to any
11 subsequent tax-exempt use. Penalties and interest shall be added to
12 the tax if applicable as provided in this act. For the purpose of
13 the proper administration of this act and to prevent the evasion of
14 the tax, all of the following shall be presumed:

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

19 (b) That tangible personal property used solely for personal,
20 nonbusiness purposes that is purchased outside of this state and
21 that is not an aircraft is exempt from the tax levied under this
22 act if 1 or more of the following conditions are satisfied:

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

26 (ii) The property is purchased by a person who is a resident of
27 this state at the time of purchase and is brought into this state

1 more than 360 days after the date of purchase.

2 (3) ~~(2)~~—The tax imposed by this section for the privilege of
3 using, storing, or consuming a vehicle, ORV, manufactured housing,
4 aircraft, snowmobile, or watercraft shall be collected before the
5 transfer of the vehicle, ORV, manufactured housing, aircraft,
6 snowmobile, or watercraft, except a transfer to a licensed dealer
7 or retailer for purposes of resale that arises by reason of a
8 transaction made by a person who does not transfer vehicles, ORVs,
9 manufactured housing, aircraft, snowmobiles, or watercraft in the
10 ordinary course of his or her business done in this state. The tax
11 on a vehicle, ORV, snowmobile, and watercraft shall be collected by
12 the secretary of state before the transfer of the vehicle, ORV,
13 snowmobile, or watercraft registration. The tax on manufactured
14 housing shall be collected by the department of consumer and
15 industry services, mobile home commission, or its agent before the
16 transfer of the certificate of title. The tax on an aircraft shall
17 be collected by the department of treasury. The price tax base of a
18 new or previously owned car or truck held for resale by a dealer
19 and that is not exempt under section 4(1)(c) is the purchase price
20 of the car or truck multiplied by 2.5% plus \$30.00 per month
21 beginning with the month that the dealer uses the car or truck in a
22 nonexempt manner.

23 (4) ~~(3)~~—The following transfers or purchases are not subject
24 to use tax:

25 (a) A transaction or a portion of a transaction if the
26 transferee or purchaser is the spouse, mother, father, brother,
27 sister, child, stepparent, stepchild, stepbrother, stepsister,

1 grandparent, grandchild, legal ward, or a legally appointed
2 guardian with a certified letter of guardianship, of the
3 transferor.

4 (b) A transaction or a portion of a transaction if the
5 transfer is a gift to a beneficiary in the administration of an
6 estate.

7 (c) If a vehicle, ORV, manufactured housing, aircraft,
8 snowmobile, or watercraft that has once been subjected to the
9 Michigan sales or use tax is transferred in connection with the
10 organization, reorganization, dissolution, or partial liquidation
11 of an incorporated or unincorporated business and the beneficial
12 ownership is not changed.

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

20 (5) ~~(4)~~—The department may utilize the services, information,
21 or records of any other department or agency of state government in
22 the performance of its duties under this act, and other departments
23 or agencies of state government are required to furnish those
24 services, information, or records upon the request of the
25 department.

26 (6) ~~(5)~~—Any decrease in the rate of the tax levied under
27 subsection (1) on services subject to tax under this act shall

1 apply only to billings rendered on or after the effective date of
2 the decrease.

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

8 (2) THE FOLLOWING SERVICES ARE NOT SUBJECT TO TAX UNDER THIS
9 ACT:

10 (A) SERVICES PROVIDED BY ANY OF THE FOLLOWING:

11 (i) A RELIGIOUS ORGANIZATION.

12 (ii) A COMMUNITY FOUNDATION.

13 (iii) AN ORGANIZATION THAT AWARDS GRANTS.

14 (iv) A CHARITABLE ORGANIZATION.

15 (v) A SOCIAL ADVOCACY ORGANIZATION.

16 (vi) A HUMAN RIGHTS ORGANIZATION.

17 (vii) AN ENVIRONMENTAL, CONSERVATION, OR WILDLIFE ORGANIZATION.

18 (viii) A CIVIC ORGANIZATION.

19 (ix) A SOCIAL ORGANIZATION.

20 (x) A BUSINESS ASSOCIATION.

21 (xi) A PROFESSIONAL ORGANIZATION.

22 (xii) A LABOR UNION.

23 (xiii) A POLITICAL ORGANIZATION.

24 (B) EDUCATIONAL SERVICES.

25 (C) HEALTH CARE SERVICES.

26 (D) SOCIAL ASSISTANCE SERVICES.

27 (E) REAL ESTATE SERVICES.

1 (F) INTANGIBLE LEASING SERVICES.

2 (G) SERVICES THAT ARE PRIMARILY BUSINESS TO BUSINESS
3 TRANSACTIONS, INCLUDING, BUT NOT LIMITED TO, ACCOUNTING,
4 BOOKKEEPING, SURVEYING, DRAFTING, ARCHITECTURAL SERVICES, AND
5 OFFICE ADMINISTRATION.

6 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, SERVICES SUBJECT
7 TO TAX UNDER THIS ACT AS PROVIDED IN THIS SECTION SHALL BE SOURCED
8 UNDER SECTION 20.

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

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

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

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

24 (d) If subdivisions (a) through (c) do not apply, the sale is
25 sourced to the location indicated by an address for the purchaser
26 obtained at the completion of the sale, including the address of
27 the purchaser's payment instrument if no other address is

1 available, provided use of the address does not constitute bad
2 faith.

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

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

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

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

27 (3) For sourcing the lease or rental of motor vehicles,

trailers, semitrailers, or aircraft that are not transportation equipment, the following apply:

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

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

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

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

(6) As used in this section:

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

(i) Taking possession of tangible personal property.

(ii) Making first use of services.

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

(i) Locomotives and railcars utilized for the carriage of

1 persons or property in interstate commerce.

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

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

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

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