

Act No. 114
Public Acts of 2018
Approved by the Governor
April 25, 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Reps. Barrett, Lauwers, VanderWall and Rendon

ENROLLED HOUSE BILL No. 4564

AN ACT to amend 1937 PA 94, entitled “An act to provide for the levy, assessment, and collection of a specific excise tax on the storage, use, or consumption in this state of tangible personal property and certain services; to appropriate the proceeds of that tax; to prescribe penalties; and to make appropriations,” by amending section 4 (MCL 205.94), as amended by 2017 PA 218.

The People of the State of Michigan enact:

Sec. 4. (1) The following are exempt from the tax levied under this act, subject to subsection (2):

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

(b) Property, the storage, use, or other consumption of which this state is prohibited from taxing under the constitution or laws of the United States, or under the constitution of this state.

(c) All of the following:

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

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

(iii) Property purchased for demonstration purposes. For a new vehicle dealer selling a new car or truck, exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding calendar year, without regard to specific make or style, according to the following schedule but not to exceed 25 cars and trucks in 1 calendar year for demonstration purposes:

(A) 0 to 25, 2 units.

(B) 26 to 100, 7 units.

(C) 101 to 500, 20 units.

(D) 501 or more, 25 units.

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

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

(e) Property the sale or use of which was already subjected to a sales tax or use tax equal to, or in excess of, that imposed by this act under the law of any other state or a local governmental unit within a state if the tax was due and paid on the retail sale to the consumer and the state or local governmental unit within a state in which the tax was imposed accords like or complete exemption on property the sale or use of which was subjected to the sales or use tax of this state. If the sale or use of property was already subjected to a tax under the law of any other state or local governmental unit within a state in an amount less than the tax imposed by this act, this act shall apply, but at a rate measured by the difference between the rate provided in this act and the rate by which the previous tax was computed.

(f) Except as otherwise provided under subsection (3), property sold to a person engaged in a business enterprise that uses or consumes the property, directly or indirectly, for either the tilling, planting, draining, caring for, maintaining, or harvesting of things of the soil or the breeding, raising, or caring for livestock, poultry, or horticultural products, including the transfers of livestock, poultry, or horticultural products for further growth.

(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, this state, a department or institution of this state, or a political subdivision of this state.

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

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

(i) Sales in which the property is used in activities that are mainly commercial enterprises.

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

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

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

(l) A newspaper or periodical classified under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established at least 2 years, and published at least once a week, and a copyrighted motion picture film. Tangible personal property used or consumed in producing a copyrighted motion picture film, a newspaper published more than 14 times per year, or a periodical published more than 14 times per year, and not becoming a component part of that film, newspaper, or periodical is subject to the tax. After December 31, 1993, tangible personal property used or consumed in producing a newspaper published 14 times or less per year or a periodical published 14 times or less per year and that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is exempt from the tax under this subdivision. A claim for a refund for taxes paid before January 1, 1999 under this subdivision shall be made before June 30, 1999. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax, includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

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

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

(o) A vehicle for which a special registration is secured in accordance with section 226(9) of the Michigan vehicle code, 1949 PA 300, MCL 257.226.

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

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

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

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

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

(u) The storage, use, or consumption of an aircraft by a domestic air carrier for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers, that has a maximum certificated takeoff weight of at least 6,000 pounds. For purposes of this subdivision, the term "domestic air carrier" is limited to a person engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity. The state treasurer shall estimate on January 1 each year the revenue lost by this act from the school aid fund and deposit that amount into the school aid fund from the general fund.

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

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

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

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

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

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

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

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

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

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

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

(z) Property purchased or manufactured by a person engaged in the business of constructing, altering, repairing, or improving real estate for others, to the extent that the property is affixed to and made a structural part of real estate located in another state, regardless of whether sales or use tax was due and paid in the state in which the property is affixed to real estate.

(aa) The sale of a dental prosthesis.

(bb) Except as otherwise provided under subsection (3), a sale of any of the following to a person engaged in a business enterprise that uses or consumes the following for purposes as described in subdivision (f):

(i) Machinery that is capable of simultaneously harvesting grain or other crops and biomass and machinery used for the purpose of harvesting biomass.

(ii) Agricultural land tile and subsurface irrigation pipe.

(iii) Portable grain bins, including tangible personal property affixed or to be affixed to portable grain bins and directly used in the operation of a portable grain bin.

(iv) Grain drying equipment and the fuel or energy source that powers that equipment, including tangible personal property affixed or to be affixed to that equipment and directly used in the operation of grain drying equipment.

(v) Tangible personal property purchased and installed as a component part of a structure such as a barn or shop, including, but not limited to, a water supply system, heating and cooling system, lighting system, milking system, or any other appurtenance used for purposes described in this subdivision or subdivision (f), including the maintenance or improvement of existing structures, to the extent that it is not permanently affixed to and does not become a structural part of real estate. For purposes of this subparagraph and subsection (3), property installed as a component part of a structure as provided in this subparagraph is not permanently affixed to or a structural part of real estate if it is assembled and installed in a manner that it can be disassembled without affecting the physical structural functionality of the original structure and reassembled and reused for any of the purposes described in this subdivision or subdivision (f).

(vi) Greenhouses, including tangible personal property affixed to or to be affixed to greenhouses and directly used in the operation of a greenhouse. For purposes of subsection (3), a greenhouse is not permanently affixed to or a structural part of real estate if it is assembled and installed in a manner that it can be disassembled and reassembled without affecting the functionality of the greenhouse upon being reassembled.

(cc) The sale of agricultural land tile, subsurface irrigation pipe, portable grain bins, greenhouses, and grain drying equipment to a person in the business of constructing, altering, repairing, or improving real estate for others to the extent that it is affixed to and made a structural part of real estate for others and is used for an exempt purpose described under subdivision (f) or (bb).

(dd) The sale of tangible personal property used in the direct gathering of fish, by net, line, or otherwise, by an owner-operator of a business enterprise, not including a charter fishing business enterprise.

(ee) A sale of tangible personal property that is specifically designed for, and directly used in, the harvesting of aquatic vegetation from the waters of the state, including parts and materials used for repairs of that tangible personal property, to a person engaged in a business enterprise of harvesting aquatic vegetation and ultimately used for purposes described in subdivision (f) or (bb). This exemption does not include a motor vehicle licensed or required to be licensed for use on the public roads or highways of this state or tangible personal property permanently affixed to and becoming a structural part of real estate.

(2) The property or services under subsection (1) are exempt only to the extent that the property or services are used for the exempt purposes if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) The exemptions under subsection (1)(f), (bb), (cc), and (dd) do not include the transfers of food, fuel, clothing, or any similar tangible personal property for personal living or human consumption or tangible personal property permanently affixed to and becoming a structural part of real estate unless it is agricultural land tile, subsurface irrigation pipe, a portable grain bin, or grain drying equipment.

(4) Subsections (1)(f), (bb), and (cc) as amended by the amendatory act that added this subsection are intended to be retroactive and to apply to all periods open under section 27a of 1941 PA 122, MCL 205.27a, but do not apply to any refund claims filed prior to April 9, 2018.

(5) As used in this section:

(a) "Agricultural land tile" means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land.

(b) "Algae" means any of the group of nonvascular aquatic plants which do not have stems, flowers, leaves, and roots, and which are single-celled, colonial, or filamentous forms.

(c) "Aquatic vegetation" means both algae and higher aquatic plants.

(d) "Biomass" means crop residue used to produce energy or agricultural crops grown specifically for the production of energy.

(e) "Greenhouse" means a structure covered with transparent or translucent materials for the purpose of admitting natural light and controlling the atmosphere for growing horticultural products. Greenhouse does not include a structure primarily used to grow marihuana.

(f) "Higher aquatic plant" means any of the group of vascularized plants which have true stems, flowers, leaves, and roots, which live in water, and which belong to the class Angiospermae.

(g) "Portable grain bin" 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.

(h) "Waters of the state" means that term as defined in section 3302 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3302.

Enacting section 1. This amendatory act does not apply to a claim for a refund filed prior to April 9, 2018.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor