



HOUSE BILL No. 4733

April 25, 1995, Introduced by Reps. Agee, Schroer, Wetters, Griffin, Profit, Mathieu, Baade, Pitoniak, Munsell, Brater, Hanley, Price, Emerson, Martinez, Baird, Cherry, Clack and LaForge and referred to the Committee on Tax Policy.

A bill to amend section 2 of Act No. 94 of the Public Acts of 1937, entitled as amended

"Use tax act,"

as amended by Act No. 506 of the Public Acts of 1988, being section 205.92 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2 of Act No. 94 of the Public Acts of
2 1937, as amended by Act No. 506 of the Public Acts of 1988, being
3 section 205.92 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 2. As used in this act:

6 (a) "Person" means an individual, firm, partnership, joint
7 venture, association, social club, fraternal organization,
8 municipal or private corporation whether or not organized for
9 profit, company, estate, trust, receiver, trustee, syndicate, the

1 United States, this state, county, or any other group or
2 combination acting as a unit, and the plural as well as the sin-
3 gular number, unless the intention to give a more limited meaning
4 is disclosed by the context.

5 (b) "Use" means the exercise of a right or power over tangi-
6 ble personal property incident to the ownership of that property
7 including transfer of the property in a transaction where posses-
8 sion is given.

9 (c) "Storage" means a keeping or retention OF PROPERTY in
10 this state for any purpose after ~~losing~~ THE PROPERTY LOSES its
11 interstate character.

12 (d) "Seller" means the person from whom a purchase is made
13 and includes every person selling tangible personal property or
14 services for storage, use, or other consumption in this state.
15 If, in the opinion of the department, it is necessary for the
16 efficient administration of this act to regard a salesperson,
17 representative, peddler, or canvasser as the agent of a dealer,
18 distributor, supervisor, or employer under whom the person oper-
19 ates or from whom he or she obtains tangible personal property or
20 services ~~—~~ sold by him or her for storage, use, or other con-
21 sumption in this state, irrespective of whether or not he or she
22 is making the sales on his or her own behalf or on behalf of the
23 dealer, distributor, supervisor, or employer, the department may
24 so consider him or her, and may consider the dealer, distributor,
25 supervisor, or employer as the seller for the purpose of this
26 act.

1 (e) "Purchase" means ~~acquired~~ TO ACQUIRE for a
2 consideration, whether the acquisition ~~was~~ IS effected by a
3 transfer of title, of possession, or of both, or a license to use
4 or consume; whether the transfer ~~was~~ IS absolute or condition-
5 al, and by whatever means the transfer ~~was~~ IS effected; and
6 whether consideration is a price or rental in money, or by way of
7 exchange or barter.

8 (f) "Price" means the aggregate value in money of anything
9 paid or delivered, or promised to be paid or delivered, by a con-
10 sumer to a seller in the consummation and complete performance of
11 the transaction by which tangible personal property or services
12 ~~were~~ ARE purchased or rented for storage, use, or other con-
13 sumption in this state, without a deduction for the cost of the
14 property sold, cost of materials used, labor or service cost,
15 interest or discount paid, or any other expense. The price of
16 tangible personal property, for affixation to real estate, with-
17 drawn by a construction contractor from inventory available for
18 sale to others or made available by publication or price list as
19 a finished product for sale to others is the finished goods
20 inventory value of the property. ~~For contracts entered into~~
21 ~~after March 31, 1989, if~~ IF a construction contractor manufac-
22 tures, fabricates, or assembles tangible personal property ~~prior~~
23 ~~to~~ BEFORE affixing it to real estate, the price of the property
24 ~~shall be~~ IS equal to the sum of the materials cost of the prop-
25 erty and the cost of labor to manufacture, fabricate, or assemble
26 the property but ~~shall~~ DOES not include the cost of labor to
27 cut, bend, assemble, or attach property at the site of affixation

1 to real estate. For the purposes of the preceding sentence, for
2 property withdrawn by a construction contractor from inventory
3 available for sale to others or made available by publication or
4 price list as a finished product for sale to others, the materi-
5 als cost of the property means the finished goods inventory value
6 of the property. For purposes of this subdivision, "manufacture"
7 means to convert or condition tangible personal property by
8 changing the form, composition, quality, combination, or charac-
9 ter of the property ~~;~~ and "fabricate" means to modify or pre-
10 pare tangible personal property for affixation or assembly.

11 ~~Beginning January 1, 1984 and until July 3, 1984, if a purchase~~
12 ~~is made of or a qualified purchase agreement is entered into for~~
13 ~~the purchase of a motor vehicle or trailer coach with an exchange~~
14 ~~of a used motor vehicle or a used trailer coach or if a purchase~~
15 ~~is made of or a qualified purchase agreement is entered into for~~
16 ~~the purchase of a titled watercraft with an exchange of a used~~
17 ~~titled watercraft, the price shall be the difference between the~~
18 ~~agreed upon value of the motor vehicle, trailer coach, or titled~~
19 ~~watercraft used as part payment of the purchase price and the~~
20 ~~full retail price of the motor vehicle, trailer coach, or titled~~
21 ~~watercraft being purchased. A qualified purchase agreement means~~
22 ~~a purchase agreement presented to the secretary of state at the~~
23 ~~time the vehicle is registered in this state for a transfer of~~
24 ~~ownership that shall occur on or before February 1, 1985.~~

25 ~~Beginning July 3, 1984, the~~ THE price of a motor vehicle,
26 trailer coach, or titled watercraft ~~shall be~~ IS the full retail
27 price of the motor vehicle, trailer coach, or titled watercraft

1 being purchased. The tax collected by the seller from the
2 consumer or lessee under this act ~~shall~~ IS not ~~be~~ considered
3 ~~as a~~ part of the price, but ~~shall be considered as~~ IS a tax
4 collection for the benefit of the state, and a person other than
5 the state shall not derive a benefit from the collection or pay-
6 ment of this tax. A price does not include an assessment imposed
7 pursuant to either the convention and tourism marketing act, Act
8 No. 383 of the Public Acts of 1980, being sections 141.881 to
9 141.889 of the Michigan Compiled Laws, ACT NO. 263 OF THE PUBLIC
10 ACTS OF 1974, BEING SECTIONS 141.861 TO 141.867 OF THE MICHIGAN
11 COMPILED LAWS, or the community convention ~~and~~ OR tourism mar-
12 keting act, Act No. 395 of the Public Acts of 1980, being sec-
13 tions 141.871 to 141.880 of the Michigan Compiled Laws, ~~which~~
14 THAT was added to charges for rooms or lodging otherwise subject,
15 pursuant to section 3a, to tax under this act. Price does not
16 include specific charges for technical support or for adapting or
17 modifying prewritten, standard, or canned computer software pro-
18 grams to a purchaser's needs or equipment if the charges are sep-
19 arately stated and identified. ~~Tax~~ THE TAX imposed ~~pursuant~~
20 ~~to~~ UNDER this act shall not be computed or collected on rental
21 receipts ~~when~~ IF the tangible personal property rented or
22 leased has previously been subjected to a Michigan sales or use
23 tax when purchased by the lessor.

24 (g) "Consumer" means the person who has purchased tangible
25 personal property or services for storage, use, or other consump-
26 tion in this state and includes a person acquiring tangible
27 personal property ~~when~~ IF engaged in the business of

1 constructing, altering, repairing, or improving the real estate
2 of others.

3 (h) "Business" means all activities engaged in by a person
4 or caused to be engaged in by a person with the object of gain,
5 benefit, or advantage, either direct or indirect.

6 (i) "Department" means the revenue division of the depart-
7 ment of treasury.

8 (j) "Tax" includes all taxes, interest, or penalties levied
9 under this act.

10 (k) "Tangible personal property" includes ~~beginning~~
11 ~~December 28, 1987,~~ computer software offered for general use by
12 the public or software modified or adapted to the user's needs or
13 equipment by the seller, only if the software is available from a
14 seller of software on an as is basis or as an end product without
15 modification or adaptation. Tangible personal property does not
16 include computer software originally designed for the exclusive
17 use and special needs of the purchaser. As used in this subdivi-
18 sion, "computer software" means a set of statements or instruc-
19 tions that when incorporated in a machine usable medium is
20 capable of causing a machine or device having information pro-
21 cessing capabilities to indicate, perform, or achieve a particu-
22 lar function, task, or result.

23 Section 2. This amendatory act is effective for taxes
24 levied after 1980.