

HOUSE BILL No. 4159

February 5, 2003, Introduced by Reps. Sheen, Milosch, Hoogendyk, Robertson, Gaffney, Caswell, Nitz, Newell, Vander Veen, Rocca, Drolet, Nofs and Garfield and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2 (MCL 205.92), as amended by 2002 PA 669.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Person" means an individual, firm, partnership, joint
3 venture, association, social club, fraternal organization,
4 municipal or private corporation whether or not organized for
5 profit, company, limited liability company, estate, trust,
6 receiver, trustee, syndicate, the United States, this state,
7 county, or any other group or combination acting as a unit, and
8 the plural as well as the singular number, unless the intention
9 to give a more limited meaning is disclosed by the context.

10 (b) "Use" means the exercise of a right or power over
11 tangible personal property incident to the ownership of that

1 property including transfer of the property in a transaction
2 where possession is given.

3 (c) "Storage" means a keeping or retention of property in
4 this state for any purpose after the property loses its
5 interstate character.

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

21 (e) "Purchase" means to acquire for a consideration, whether
22 the acquisition is effected by a transfer of title, of
23 possession, or of both, or a license to use or consume; whether
24 the transfer is absolute or conditional, and by whatever means
25 the transfer is effected; and whether consideration is a price or
26 rental in money, or by way of exchange or barter.

27 (f) "Price" means the aggregate value in money of anything

1 paid or delivered, or promised to be paid or delivered, by a
2 consumer to a seller in the consummation and complete performance
3 of the transaction by which tangible personal property or
4 services are purchased or rented for storage, use, or other
5 consumption in this state, without a deduction for the cost of
6 the property sold, cost of materials used, labor or service cost,
7 interest or discount paid, or any other expense. The price of
8 tangible personal property, for affixation to real estate,
9 withdrawn by a construction contractor from inventory available
10 for sale to others or made available by publication or price list
11 as a finished product for sale to others is the finished goods
12 inventory value of the property. If a construction contractor
13 manufactures, fabricates, or assembles tangible personal property
14 before affixing it to real estate, the price of the property is
15 equal to the sum of the materials cost of the property and the
16 cost of labor to manufacture, fabricate, or assemble the property
17 but does not include the cost of labor to cut, bend, assemble, or
18 attach property at the site of affixation to real estate. For
19 the purposes of the preceding sentence, for property withdrawn by
20 a construction contractor from inventory available for sale to
21 others or made available by publication or price list as a
22 finished product for sale to others, the materials cost of the
23 property means the finished goods inventory value of the
24 property. For purposes of this subdivision, "manufacture" means
25 to convert or condition tangible personal property by changing
26 the form, composition, quality, combination, or character of the
27 property and "fabricate" means to modify or prepare tangible

1 personal property for affixation or assembly. The price of a
2 ~~motor vehicle,~~ trailer coach ~~,~~ or titled watercraft is the
3 full retail price of the ~~motor vehicle,~~ trailer coach ~~,~~ or
4 titled watercraft being purchased. **The price of a motor vehicle**
5 **is the full retail price of the motor vehicle being purchased**
6 **minus the agreed-upon value of any motor vehicle used as part**
7 **payment of the purchase price.** The tax collected by the seller
8 from the consumer or lessee under this act is not considered part
9 of the price, but is a tax collection for the benefit of the
10 state, and a person other than the state shall not derive a
11 benefit from the collection or payment of this tax. A price does
12 not include an assessment imposed under the convention and
13 tourism marketing act, 1980 PA 383, MCL 141.881 to 141.889, 1974
14 PA 263, MCL 141.861 to 141.867, the state convention facility
15 development act, 1985 PA 106, MCL 207.621 to 207.640, the
16 regional tourism marketing act, 1989 PA 244, MCL 141.891 to
17 141.900, 1991 PA 180, MCL 207.751 to 207.759, or the community
18 convention or tourism marketing act, 1980 PA 395, MCL 141.871 to
19 141.880, that was added to charges for rooms or lodging otherwise
20 subject, pursuant to section 3a, to tax under this act. Price
21 does not include specific charges for technical support or for
22 adapting or modifying prewritten, standard, or canned computer
23 software programs to a purchaser's needs or equipment if the
24 charges are separately stated and identified. The tax imposed
25 under this act shall not be computed or collected on rental
26 receipts if the tangible personal property rented or leased has
27 previously been subjected to a Michigan sales or use tax when

1 purchased by the lessor.

2 (g) "Consumer" means the person who has purchased tangible
3 personal property or services for storage, use, or other
4 consumption in this state and includes a person acquiring
5 tangible personal property if engaged in the business of
6 constructing, altering, repairing, or improving the real estate
7 of others.

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

11 (i) "Department" means the revenue division of the department
12 of treasury.

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

15 (k) "Tangible personal property" includes computer software
16 offered for general use by the public or software modified or
17 adapted to the user's needs or equipment by the seller, only if
18 the software is available from a seller of software on an as is
19 basis or as an end product without modification or adaptation.
20 Tangible personal property does not include computer software
21 originally designed for the exclusive use and special needs of
22 the purchaser. As used in this subdivision, "computer software"
23 means a set of statements or instructions that when incorporated
24 in a machine usable medium is capable of causing a machine or
25 device having information processing capabilities to indicate,
26 perform, or achieve a particular function, task, or result.

27 (l) "Tangible personal property" beginning September 20,

1 1999, includes electricity, natural or artificial gas, or steam
2 and also the transmission and distribution of electricity used by
3 the consumer or user of the electricity, whether the electricity
4 is purchased from the delivering utility or from another
5 provider.

6 (m) "Tangible personal property" does not include a
7 commercial advertising element if the commercial advertising
8 element is used to create or develop a print, radio, television,
9 or other advertisement, the commercial advertising element is
10 discarded or returned to the provider after the advertising
11 message is completed, and the commercial advertising element is
12 custom developed by the provider for the purchaser. As used in
13 this subdivision, "commercial advertising element" means a
14 negative or positive photographic image, an audiotape or
15 videotape master, a layout, a manuscript, writing of copy, a
16 design, artwork, an illustration, retouching, and mechanical or
17 keyline instructions. "Tangible personal property" includes
18 black and white or full color process separation elements, an
19 audiotape reproduction, or a videotape reproduction.

20 (n) "Textiles" means goods that are made of or incorporate
21 woven or nonwoven fabric, including, but not limited to,
22 clothing, shoes, hats, gloves, handkerchiefs, curtains, towels,
23 sheets, pillows, pillowcases, tablecloths, napkins, aprons,
24 linens, floor mops, floor mats, and thread. Textiles also
25 include materials used to repair or construct textiles, or other
26 goods used in the rental, sale, or cleaning of textiles.

27 (o) "Interstate motor carrier" means a person who operates or

1 causes to be operated a qualified commercial motor vehicle on a
2 public road or highway in this state and at least 1 other state
3 or Canadian province.

4 (p) "Qualified commercial motor vehicle" means that term as
5 defined in section 1(i), (j), and (k) of the motor carrier fuel
6 tax act, 1980 PA 119, MCL 207.211.

7 (q) "Diesel fuel" means that term as defined in section 2(p)
8 of the motor fuel tax act, 2000 PA 403, MCL 207.1002.