

HOUSE BILL No. 4368

March 1, 2007, Introduced by Rep. Cushingberry and referred to the Committee on Tax Policy.

A bill to provide for the levy, assessment, and collection of an excise tax on certain services; to provide exemptions; to appropriate the proceeds; to prescribe certain powers and duties of certain state departments; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "service providers excise tax act".

3 Sec. 3. As used in this act:

4 (a) "Affiliated group" means 2 or more United States
5 corporations, 1 of which owns or controls, directly or indirectly,
6 80% or more of the capital stock or other ownership interest with
7 voting rights of the other United States corporation or United
8 States corporations.

1 (b) "Controlled group" means a controlled group of
2 corporations as defined by section 1563 of the internal revenue
3 code, 26 USC 1563.

4 (c) "Department" means the department of treasury.

5 (d) "Employee" means an employee as defined in section 3401(c)
6 of the internal revenue code, 26 USC 3401, in effect on January 1,
7 2007. A requirement that an employer withhold taxes from a person
8 for federal income tax purposes is prima facie evidence that the
9 person is an employee.

10 (e) "Entities under common control" means entities described
11 in the United States department of treasury regulation 1.414(c)
12 relating to 2 or more trades or businesses qualifying for pension,
13 profit-sharing, and stock bonus plans.

14 (f) "Gross receipts" means the total amount of consideration,
15 including cash, credit, property, and services, for which services
16 are sold, valued in money, whether received in money or otherwise,
17 without any deduction for the service provider's cost of the
18 service sold, the cost of materials used or installed, labor or
19 service cost, interest, losses, costs of transportation to the
20 service provider, taxes imposed on the service provider other than
21 the tax imposed under this act, and any other expense of the
22 service provider. Gross receipts do not include the following:

23 (i) Discounts, including cash, term, or coupons that are not
24 reimbursed by a third party that are allowed by a service provider
25 and taken by a service provider on a sale of a service.

26 (ii) Interest, financing, and carrying charges from credit
27 extended on the sale of services, if the amount is separately

1 stated on the invoice, bill of sale, or similar document given to
2 the purchaser.

3 (iii) Any taxes legally imposed directly on the purchaser that
4 are separately stated on the invoice, bill of sale, or similar
5 document given to the purchaser.

6 (g) "Intermediary" means a person to whom a service is sold
7 who specifically charges a third person for that service and that
8 third person is the ultimate recipient of that service.

9 (h) "NAICS" means North American industry classification
10 system, 2002 as produced by the United States office of management
11 and budget.

12 (i) "Parent cooperative preschool" means a nonprofit,
13 nondiscriminatory educational institution, maintained as a
14 community service and administered by parents of children currently
15 enrolled in the preschool, that provides an educational and
16 developmental program for children younger than compulsory school
17 age, that provides an educational program for parents, including
18 active participation with children in preschool activities, that is
19 directed by qualified preschool personnel, and that is licensed by
20 the department of labor and economic growth pursuant to 1973 PA
21 116, MCL 722.111 to 722.128.

22 (j) "Person" means an individual, firm, partnership, joint
23 venture, association, social club, fraternal organization,
24 municipal or private corporation whether or not organized for
25 profit, company, limited liability company, estate, trust,
26 receiver, trustee, syndicate, the United States, this state, any
27 political subdivision of this state, or any other group or

1 combination acting as a unit, unless the intention to give a more
2 limited meaning is indicated by the context.

3 (k) "Service" means an activity engaged in for another person
4 for a fee, retainer, commission, or other consideration, including
5 a professional service, which activity predominantly involves the
6 performance or delivery of a task or process as distinguished from
7 the transfer or production of tangible personal property. In
8 determining whether an activity is a service for purposes of this
9 act, the intended use, principal objective, or ultimate objective
10 of contracting parties is not controlling.

11 (l) "Service provider" means a person performing or delivering
12 a service. However, if the department determines that it is
13 necessary for the efficient administration of this act to regard a
14 person as an agent of a dealer, distributor, supervisor, employer,
15 or person under whom they operate or on behalf of whom they perform
16 or deliver a service, irrespective of whether that person is
17 performing or delivering a service on his or her own behalf or on
18 behalf of that dealer, distributor, supervisor, employer, or other
19 person, the department may regard that person as an agent and may
20 consider the dealer, distributor, supervisor, employer, or person
21 under whom they operate or on behalf of whom they perform or
22 deliver a service as performing or delivering a service for the
23 purposes of this act.

24 (m) "Taxpayer" means a person subject to the tax levied under
25 this act.

26 (n) "United States corporation" means a domestic corporation
27 as that term is defined in section 7701(a)(3) and (4) of the

1 internal revenue code, 26 USC 7701.

2 Sec. 5. (1) There is levied upon and there shall be collected
3 from every person performing or delivering a service in a
4 transaction, in which that service is received in this state by the
5 purchaser or the purchaser's designee, a specific tax at a rate
6 equal to 2% of the gross receipts from the provision of the
7 service.

8 (2) The department may use the services, information, or
9 records of any other department or agency of state government in
10 the performance of its duties under this act, and other departments
11 or agencies of state government shall furnish those services,
12 information, or records upon the request of the department.

13 Sec. 7. (1) Services subject to the tax levied under this act
14 include, but are not limited to, the following:

15 (a) Admission to presentations of performing arts companies,
16 as described in NAICS industry group code 7111, except as otherwise
17 provided in section 9(1)(kk).

18 (b) Admission to spectator sports, including, but not limited
19 to, professional or semiprofessional sports teams or clubs that are
20 primarily engaged in live sporting events, racetracks, and other
21 spectator sports, as described in NAICS industry group code 7112,
22 except as otherwise provided in section 9(1)(jj).

23 (c) Admission to motion picture and video exhibitions, as
24 described in NAICS industry code 51213.

25 (d) Cable and other program distribution, as described in
26 NAICS industry group code 5175.

27 (e) Operation of amusement parks and arcades, as described in

1 NAICS industry group code 7131.

2 (f) Dues and fees for golf courses and country clubs, as
3 described in NAICS industry code 71391.

4 (g) Operation of skiing facilities, as described in NAICS
5 industry code 71392.

6 (h) Operation of marinas, as described in NAICS industry code
7 71393.

8 (i) Operation of bowling centers, as described in NAICS
9 industry code 71395.

10 (j) Repair and maintenance services, as described in NAICS
11 subsector code 811.

12 (k) Personal care services, as described in NAICS industry
13 group code 8121.

14 (l) Dry cleaning and laundry services, as described in NAICS
15 industry group code 8123.

16 (m) Other personal services, as described in NAICS industry
17 code 812990, which include, but are not limited to, bail bonding
18 services, dating services, shoe shine services, social escort
19 services, and wedding planning services.

20 (n) Exterminating and pest control services, as described in
21 NAICS industry code 56171.

22 (o) Janitorial services, as described in NAICS industry code
23 56172.

24 (p) Landscaping services, as described in NAICS industry code
25 56173.

26 (q) Carpet and upholstery cleaning services, as described in
27 NAICS industry code 56174.

1 (r) Other services to buildings and dwellings, as described in
2 NAICS industry code 56179, which include, but are not limited to,
3 chimney cleaning, drain or gutter cleaning, swimming pool cleaning
4 and maintenance, and ventilation duct cleaning.

5 (s) Transit and ground passenger transport services, as
6 described in NAICS industry group code 4853 and NAICS industry code
7 48841.

8 (t) Scenic and sightseeing transportation services, as
9 described in NAICS subsector code 487.

10 (u) Travel agency services, as described in NAICS industry
11 code 56151.

12 (v) Tour operator services, as described in NAICS industry
13 code 56152.

14 (w) Other travel arrangement and reservation services, as
15 described in NAICS industry code 56169, which include, but are not
16 limited to, condominium time-share exchange services, convention or
17 visitors bureau services, automobile club services, and ticket
18 services.

19 (x) Other amusement and recreation services, as described in
20 NAICS industry code 71399, which include, but are not limited to,
21 pool parlors, dance halls, miniature golf courses, coin-operated
22 amusement devices but not gambling devices, riding stables, and
23 recreational day camps that are noninstructional.

24 (y) The renting or leasing of miniwarehouses and self-storage
25 units, as described in NAICS industry code 53113.

26 (z) Operation of warehousing and storage facilities, as
27 described in NAICS subsector code 493.

1 (aa) Investigation, guard, and armored car services, as
2 described in NAICS industry code 56161.

3 (bb) Security systems services, as described in NAICS industry
4 code 56162.

5 (cc) Waste collection services, as described in NAICS industry
6 group code 5621.

7 (dd) Operation of waste treatment and disposal facilities, as
8 described in NAICS industry group code 5622.

9 (ee) Remediation and other waste management services, as
10 described in NAICS industry group code 5629.

11 (ff) Veterinary services, as described in NAICS industry code
12 54194.

13 (gg) Operation of fitness and recreational sports centers, as
14 described in NAICS industry code 71394.

15 (hh) Death care services, as described in NAICS industry group
16 code 8122, which include, but are not limited to, cremation,
17 embalming, providing facilities for wakes, funeral home services,
18 and interment.

19 (ii) Legal services, as described in NAICS industry group code
20 5411.

21 (jj) Accounting services, as described in NAICS industry group
22 code 5412.

23 (kk) Architectural, engineering, and related services, as
24 described in NAICS industry group code 5413.

25 (ll) Insurance agency and brokerage services, as described in
26 NAICS industry code 52421.

27 (mm) Claims adjusting services, as described in NAICS industry

1 code 524291.

2 (nn) Third party administration services of insurance or
3 pension funds, as described in NAICS industry code 524292.

4 (oo) Other insurance-related activities, as described in NAICS
5 industry code 524298, which include, but are not limited to,
6 advisory services and rate-making services.

7 (pp) Providing investment advice, as described in NAICS
8 industry code 52393.

9 (qq) Acting as real estate agents and brokers, as described in
10 NAICS industry group code 5312.

11 (rr) Real estate-related services, as described in NAICS
12 industry group code 5313, which include, but are not limited to,
13 managing real estate for others and appraising real estate.

14 (ss) Courier and messenger services, as described in NAICS
15 subsector code 492.

16 (tt) Office administration services, as described in NAICS
17 industry group code 5611.

18 (uu) Facilities support services, as described in NAICS
19 industry group code 5612.

20 (vv) Employment placement agency services, as described in
21 NAICS industry code 56131.

22 (ww) Temporary help services, as described in NAICS industry
23 code 56132, except as otherwise provided in section 9(1)(pp).

24 (xx) Services provided by professional employer organizations,
25 as described in NAICS industry code 56133, except as otherwise
26 provided in section 9(1)(pp).

27 (yy) Document preparation services, as described in NAICS

1 industry 56141.
2 (zz) Telephone call center services, as described in NAICS
3 industry code 56142.
4 (aaa) Business service center services, as described in NAICS
5 industry code 56143.
6 (bbb) Collection agency services, as described in NAICS
7 industry code 56144.
8 (ccc) Credit bureau services, as described in NAICS industry
9 code 56145.
10 (ddd) Other business support services, as described in NAICS
11 industry code 56149, which include, but are not limited to, bar
12 code imprinting, court reporting, fund-raising on a contract or fee
13 basis, mail presorting, and repossession services.
14 (eee) Packaging and labeling services, as described in NAICS
15 industry code 56191.
16 (fff) Convention and trade show organizer services, as
17 described in NAICS industry code 56192.
18 (ggg) Other support services, as described in NAICS industry
19 code 56199, which include, but are not limited to, bartering
20 services, bottle exchanging, cloth cutting for the trade, driving
21 on a contract or fee basis, inventory-taking services, and water
22 softening and conditioning services.
23 (hhh) Management, scientific, and technical consulting
24 services, as described in NAICS industry group code 5416.
25 (iii) Advertising and related services, as described in NAICS
26 industry group code 5418.
27 (jjj) Management of nonfinancial intangible assets, as

1 described in NAICS subsector code 533.

2 (kkk) Other professional, scientific, and technical services,
3 as described in NAICS industry group code 5419, which include, but
4 are not limited to, market research, photographic services,
5 translation services, consumer credit counseling, pipeline or power
6 line inspection, and handwriting analysis.

7 (lll) Construction services, as described in NAICS sector code
8 23.

9 (mmm) Rail transportation services, as described in NAICS
10 subsector code 482, to the extent services are provided for freight
11 transportation.

12 (nnn) Truck transportation services, as described in NAICS
13 subsector code 484.

14 (2) The specific designation of a service, business, or
15 profession in subsection (1) is illustrative and is not exclusive
16 and shall not limit the scope of services subject to the tax levied
17 under this act.

18 Sec. 9. (1) The following services are exempt from the tax
19 levied under this act:

20 (a) Services performed or delivered by an employee for his or
21 her employer.

22 (b) Services performed or delivered by a nonprofit school or
23 nonprofit educational institution serving any segment of students
24 through grade 12.

25 (c) Services performed or delivered by a church, hospital,
26 parent cooperative preschool, or organization that is exempt from
27 federal income tax under section 501(c)(3) or 501(c)(4) of the

1 internal revenue code, 26 USC 501, up to a total aggregate amount
2 of gross receipts of \$5,000.00 in any calendar year. A club,
3 association, auxiliary, or other organization affiliated with a
4 church, hospital, parent cooperative preschool, or organization
5 that is exempt from federal income tax under section 501(c)(3) or
6 501(c)(4) of the internal revenue code, 26 USC 501, is not
7 considered a separate person for purposes of the exemption under
8 this subdivision.

9 (d) Wired telecommunications services, as described in NAICS
10 industry group code 5171.

11 (e) Wireless telecommunications services, as described in
12 NAICS industry group code 5172.

13 (f) Accommodations, as described in NAICS subsector code 721,
14 except accommodations rented for a continuous period of more than 1
15 month and accommodations furnished by a hospital or nursing home.

16 (g) Water and sewer system services, as described in NAICS
17 industry group code 2213.

18 (h) Air transportation services, as described in NAICS
19 subsector code 481.

20 (i) Water transportation services, as described in NAICS
21 subsector code 483.

22 (j) Pipeline transportation, as described in NAICS subsector
23 code 486.

24 (k) Publishing, as described in NAICS subsector code 511.

25 (l) Motion pictures, as described in NAICS subsector code 512,
26 except motion picture and video exhibition services are subject to
27 the tax levied under this act as provided in section 7(1)(c).

1 (m) Sound recording, as described in NAICS industry group code
2 5122.

3 (n) Broadcasting, as described in NAICS subsector codes 515
4 and 516, except that cable and other programming distribution
5 services are subject to the tax levied under this act as provided
6 in section 7(1)(d).

7 (o) Information and data processing, as described in NAICS
8 subsector codes 518 and 519.

9 (p) Promoters of performing arts, sports, and similar events,
10 as described in NAICS industry group code 7113.

11 (q) Agents and managers for artists, athletes, entertainers,
12 and other public figures, as described in NAICS industry group code
13 7114.

14 (r) Independent artists, writers, and performers, as described
15 in NAICS industry group code 7115.

16 (s) Museums, historical sites, zoos, and parks, as described
17 in NAICS subsector code 712.

18 (t) Gambling services authorized by law, as described in NAICS
19 industry group code 7132.

20 (u) Educational services, as described in NAICS sector code
21 61.

22 (v) Health care and social assistance services, as described
23 in NAICS sector code 62.

24 (w) Leasing residential buildings and dwellings, as described
25 in NAICS industry code 53111.

26 (x) Leasing nonresidential buildings, as described in NAICS
27 industry code 53112, except that miniwarehouses and self-storage

1 units are subject to the tax levied under this act as provided in
2 section 7(1)(y).

3 (y) Leasing other real estate property, as described in NAICS
4 industry code 53119.

5 (z) Religious, grant-making, and civic services, as described
6 in NAICS subsector code 813.

7 (aa) Internet access services.

8 (bb) Computer systems design and related services, as
9 described in NAICS industry group code 5415.

10 (cc) Scientific research and development services, as
11 described in NAICS industry group code 5417.

12 (dd) Finance and insurance services, as described in NAICS
13 sector code 52, except all of the following services are subject to
14 the tax levied under this act:

15 (i) Insurance agency and brokerage services, as described in
16 NAICS industry code 52421, as provided in section 7(1)(ll).

17 (ii) Claims adjusting services, as described in NAICS industry
18 code 524291, as provided in section 7(1)(mm).

19 (iii) Third party administration services of insurance or
20 pension funds, as described in NAICS industry code 524292, as
21 provided in section 7(1)(nn).

22 (iv) Providing investment advice, as described in NAICS
23 industry code 52393, as provided in section 7(1)(pp).

24 (ee) Services performed or delivered by the organizing entity
25 of a qualified athletic event, if that organizing entity is or
26 would be exempt from the tax levied under the general sales tax
27 act, 1933 PA 167, MCL 205.1 to 205.78, as provided in section 5b of

1 the general sales tax act, 1933 PA 167, MCL 205.55b, but only for
2 services included in corporate sponsor contracts for the event.

3 (ff) Rail transportation services, as described in NAICS
4 subsector code 482, to the extent services are provided for
5 passenger transportation.

6 (gg) Interurban and rural bus transportation services, as
7 described in NAICS industry group code 4852.

8 (hh) Urban transit system services, as described in NAICS
9 industry group code 4851.

10 (ii) Personal instruction services.

11 (jj) Admission to an intercollegiate sporting event, contest,
12 exhibition, or program.

13 (kk) Admission to a concert, theatrical performance, recital,
14 or dance performance that meets both of the following conditions:

15 (i) Occurs on the campus of a nonprofit postsecondary
16 institution.

17 (ii) Is predominantly performed by students of the nonprofit
18 postsecondary institution, faculty of the nonprofit postsecondary
19 institution, or a combination of students and faculty.

20 (ll) Admission to a state fair or to a county fair.

21 (mm) Parking fees subject to the airport parking tax act, 1987
22 PA 248, MCL 207.371 to 207.383.

23 (nn) Services provided by this state or any political
24 subdivision of this state that are funded by any tax or special
25 assessment.

26 (oo) Services that this state is prohibited from taxing under
27 the constitution or laws of the United States or under the state

1 constitution of 1963.

2 (pp) The portion of gross receipts for temporary help services
3 and professional employer organizations, as described in NAICS
4 industry codes 56132 and 56133, which reimburses the service
5 provider for payments made by the service provider to or on behalf
6 of an employee or for federal social insurance payments made with
7 respect to an employee. As used in this subdivision, "federal
8 social insurance payments" include, but are not limited to, FICA
9 and medicare payments.

10 (2) Services sold to any of the following are exempt from the
11 tax levied under this act:

12 (a) A nonprofit school, nonprofit hospital, or nonprofit home
13 for the care and maintenance of children or aged persons operated
14 by an entity of government, a regularly organized church,
15 religious, or fraternal organization, a veterans' organization, or
16 a corporation incorporated under the laws of this state, if the
17 income or benefit from the operation does not inure, in whole or in
18 part, to an individual or private shareholder, directly or
19 indirectly, and if the activities of the entity or agency are
20 carried on exclusively for the benefit of the public at large and
21 are not limited to the advantage, interests, and benefits of its
22 members or any restricted group.

23 (b) A parent cooperative preschool.

24 (c) A regularly organized church or house of religious
25 worship, except when the service is used or consumed in an activity
26 that is mainly a commercial enterprise.

27 (d) Persons engaged in a business enterprise and using or

1 consuming the service in the tilling, planting, caring for, or
2 harvesting of the things of the soil; in the breeding, raising, or
3 caring for livestock, poultry, or horticultural products, including
4 transfers of livestock, poultry, or horticultural products for
5 further growth; or in the direct gathering of fish, by net, line,
6 or otherwise only by an owner-operator of the business enterprise,
7 but not a charter fishing business enterprise. A service is exempt
8 under this subdivision only to the extent that that service is used
9 for the exempt purpose stated.

10 (e) The holder of a water pollution control facility tax
11 exemption certificate issued under part 37 of the natural resources
12 and environmental protection act, 1994 PA 451, MCL 324.3701 to
13 324.3708, or an air pollution control facility tax exemption
14 certificate issued under part 59 of the natural resources and
15 environmental protection act, 1994 PA 451, MCL 324.5901 to
16 324.5908, if the service is used to install a facility as that term
17 is defined in section 3701 or 5901 of the natural resources and
18 environmental protection act, 1994 PA 451, MCL 324.3701 and
19 324.5901.

20 (f) The United States, its unincorporated agencies and
21 instrumentalities, any incorporated agency or instrumentality of
22 the United States wholly owned by the United States or by a
23 corporation wholly owned by the United States, the American Red
24 Cross and its chapters and branches, and this state or its
25 departments and institutions or any of its political subdivisions.

26 (g) An organization not operated for profit and exempt from
27 federal income tax under section 501(c)(3) or 501(c)(4) of the

1 internal revenue code, 26 USC 501, but only to the extent that the
2 service is used to carry out the purposes of the organization as
3 stated in the organization's bylaws or articles of incorporation or
4 organization. The exemption under this subdivision is limited to
5 the percentage of exempt use to total use determined by a
6 reasonable formula or method approved by the department.

7 (h) A manufacturer, for direct use by the manufacturer in
8 manufacturing. As used in this subdivision:

9 (i) "Manufacturer" means a person engaged in manufacturing.

10 (ii) "Manufacturing" means the activity of transforming,
11 altering, or modifying tangible personal property by changing the
12 form, composition, or character of the tangible personal property
13 for ultimate sale at retail.

14 (i) An extractor, for direct use by the extractor in an
15 extractive operation. As used in this section:

16 (i) "Extractive operation" means the taking or extracting from
17 land for resale ore, oil, gas, coal, timber, stone, gravel, clay,
18 minerals, or other natural resource material.

19 (ii) "Extractor" means a person engaged in an extractive
20 operation.

21 (j) The organizing entity of a qualified athletic event, if
22 that organizing entity is or would be exempt from the tax levied
23 under the general sales tax act, 1933 PA 167, MCL 205.1 to 205.78,
24 as provided in section 5b of the general sales tax act, 1933 PA
25 167, MCL 205.55b, but only for services included in corporate
26 sponsor contracts for the event.

27 (k) An intermediary.

1 (l) A member of an affiliated group, a controlled group, or
2 entities under common control, when sold to another member of the
3 same affiliated group, controlled group, or entities under common
4 control.

5 Sec. 11. For the purpose of proper administration of this act
6 and to prevent evasion of the tax levied under this act, evidence
7 that a service has been received in this state is prima facie
8 evidence that the service is subject to tax.

9 Sec. 13. (1) A person engaged in the business of performing or
10 delivering services in this state that exceeds the deduction
11 allowed in section 17(1)(b) shall register with the department and
12 give the name and address of each agent operating in this state,
13 the location of all places of business in this state, and any other
14 information that the department requires relevant to the
15 enforcement of this act.

16 (2) The department of labor and economic growth shall not
17 issue to any foreign person engaged in the business of performing
18 or delivering services a certificate of authority to do business in
19 this state or approve and file any proposed documents of
20 organization submitted to it by any domestic person authorizing or
21 permitting that person to conduct any business of performing or
22 delivering services in this state unless the foreign person or
23 domestic person submits with the application for the certificate of
24 authority or proposed documents of organization an application for
25 registration of the person under this act. The application shall be
26 transmitted to the department by the department of labor and
27 economic growth.

1 (3) A person that submits a certificate of dissolution or
2 requests a certificate of withdrawal from this state shall request
3 a certificate from the department stating that taxes are not due
4 under section 27a of 1941 PA 122, MCL 205.27a, not more than 60
5 days after submitting the certificate of dissolution or requesting
6 the certificate of withdrawal. A person that does not request a
7 certificate stating that taxes are not due as required under this
8 section is subject to the penalties provided under section 24 of
9 1941 PA 122, MCL 205.24.

10 Sec. 15. (1) Except as otherwise provided in subsections (2)
11 and (4), every person performing or delivering a service subject to
12 the tax levied under this act and required to register with the
13 department under section 13, on or before the twentieth day of each
14 calendar month, shall file with the department a return for the
15 preceding calendar month, in a form prescribed by the department,
16 showing information the department considers necessary for the
17 proper administration of this act. At the same time, each person
18 shall pay to the department the amount of tax imposed by this act
19 with respect to the services covered by the return.

20 (2) If considered necessary to ensure payment of the tax
21 levied under this act or to provide a more efficient
22 administration, the department may require and prescribe the filing
23 of returns and payment of the tax for other than monthly periods.

24 (3) The tax levied under this act shall accrue to this state
25 on the last day of each calendar month.

26 (4) If a due date falls on a Saturday, Sunday, state holiday,
27 or legal banking holiday, the tax levied under this act is due on

1 the next succeeding business day.

2 Sec. 17. (1) Except as otherwise provided in subsection (2),
3 in computing the amount of tax levied under this act for any month,
4 a taxpayer may deduct the amount provided by subdivision (a) or
5 (b), whichever is greater:

6 (a) If the tax that accrued to this state under this act
7 during the preceding month is remitted to the department on or
8 before the twelfth day of the month in which remittance is due,
9 0.75% of the tax due for the preceding month, but not more than
10 \$20,000.00. If the tax that accrued to this state under this act
11 during the preceding month is remitted to the department after the
12 twelfth day and on or before the twentieth day of the month in
13 which remittance is due, 0.50% of the tax due, but not more than
14 \$15,000.00.

15 (b) The tax due when levied at the rate of 2% on \$600.00 of
16 taxable gross receipts for the preceding monthly period, or a
17 prorated portion of the tax due when levied at the rate of 2% on
18 \$600.00 of the taxable gross receipts for the preceding month if
19 the taxpayer engaged in business for less than a month.

20 (2) A deduction is not allowed under subsection (1) for
21 payment of taxes made to the department after the day the taxpayer
22 is required to pay the tax levied under this act as provided in
23 section 15.

24 (3) If the department prescribes the filing of returns and the
25 payment of the tax for a period greater than 1 month under section
26 15(2), a taxpayer may claim a deduction from the tax remitted to
27 the department for the payment period that is equivalent to the

1 deduction allowed under subsection (1) for monthly payment periods.

2 (4) The department may prescribe the filing of estimated
3 returns and annual periodic reconciliations as necessary to carry
4 out the purposes of this section.

5 Sec. 19. (1) For purposes of the tax levied under this act, a
6 taxpayer shall source a transaction for a service as follows:

7 (a) If the service is received by the purchaser or the
8 purchaser's designee at a business location of the service
9 provider, the transaction is sourced to that business location.

10 (b) If the service is not received by the purchaser or the
11 purchaser's designee at a business location of the service
12 provider, the transaction is sourced to the location where the
13 service is received by the purchaser or the purchaser's designee,
14 if known to the service provider.

15 (c) If a transaction for a service is not sourced under
16 subdivision (a) or (b), the transaction is sourced to the location
17 indicated by the purchaser's address available from the service
18 provider's business records maintained in the ordinary course of
19 the service provider's business, provided use of the address does
20 not constitute bad faith.

21 (d) If a transaction for a service is not sourced under
22 subdivision (a), (b), or (c), the transaction is sourced to the
23 location indicated by the purchaser's address obtained at the
24 completion of the transaction, including the address of the
25 purchaser's payment instrument if no other address is available,
26 provided use of the address does not constitute bad faith.

27 (e) If a transaction for a service is not sourced under

1 subdivision (a), (b), (c), or (d) or if the service provider has
2 insufficient information to source the transaction under
3 subdivision (a), (b), (c), or (d), the sale shall be sourced to the
4 location where the service provider performed the service.

5 (2) As used in this section, "receive" means making first use
6 of a service.

7 Sec. 21. (1) A person engaged in the business of performing or
8 delivering a service shall not advertise or hold out to the public
9 in any manner, directly or indirectly, that the tax levied under
10 this act is not considered an element in the price to the purchaser
11 of the service.

12 (2) A taxpayer may reimburse himself or herself by adding to
13 the price of a service any tax levied under this act. A taxpayer
14 shall separately state the tax levied under this act on any
15 invoice, bill of sale, or similar document given to the purchaser.
16 The taxpayer shall compute the tax to the third decimal place and
17 round up to a whole cent when the third decimal place is greater
18 than 4 or round down to a whole cent when the third decimal place
19 is 4 or less.

20 (3) Any tax collected by the taxpayer from the purchaser under
21 this act is for the benefit of this state and a person other than
22 this state shall not derive a benefit from the collection or
23 payment of the tax levied under this act, except as provided in
24 section 17(1)(b).

25 Sec. 23. (1) This act shall be administered by the department
26 under 1941 PA 122, MCL 205.1 to 205.31, and this act. If the
27 provisions of 1941 PA 122, MCL 205.1 to 205.31, and this act

1 conflict, the provisions of this act shall apply.

2 (2) The department may promulgate rules to implement this act
3 under the administrative procedures act of 1969, 1969 PA 306, MCL
4 24.201 to 24.328.

5 Sec. 25. (1) If a taxpayer refunds or provides a credit for
6 all or a portion of an amount paid for a service the gross receipts
7 for which are subject to the tax levied under this act within the
8 time period stated in that taxpayer's refund policy or 180 days
9 after the initial billing for the service, whichever is sooner,
10 that taxpayer shall also refund or provide a credit for the tax
11 paid under this act on all or that portion of the amount paid for
12 services that is refunded or credited.

13 (2) A cause of action against a service provider for
14 collecting an amount greater than the tax levied under this act
15 does not accrue until 60 days after a purchaser has provided
16 written notice of that claim to that service provider. The
17 purchaser shall provide sufficient information to determine the
18 validity of the request in the notice provided to the service
19 provider.

20 Sec. 27. A taxpayer shall make a final return under this act
21 within 20 days after the date that taxpayer sells that taxpayer's
22 business or a stock of goods or quits the business.

23 Sec. 29. (1) A taxpayer shall keep accurate and complete daily
24 records of services provided, receipts, invoices, and all pertinent
25 documents in a form the department requires. These records shall be
26 retained for a period of 4 years after the tax levied under this
27 act to which the records apply is due or as otherwise provided by

1 law.

2 (2) A taxpayer who is also engaged in a business, occupation,
3 or profession not subject to the tax levied under this act shall
4 maintain books and records to show separately the transactions for
5 services used to determine the amount of the tax levied under this
6 act. If the taxpayer fails to maintain separate books and records
7 as required under this subsection, the tax under this act is levied
8 on the entire gross receipts of all the taxpayer's businesses. The
9 taxes levied under this act are a personal obligation of the
10 taxpayer.

11 (3) If the department considers it necessary, the department
12 may require a taxpayer, by notice served upon that taxpayer, to
13 make a return, render under oath certain statements, or maintain
14 certain records the department considers sufficient to show whether
15 or not that person is liable for the tax under this act.

16 (4) A purchaser may provide a blanket exemption certificate in
17 a form prescribed by the department that covers all exempt
18 transactions for services between a taxpayer and that purchaser for
19 not more than 4 years as stated on the blanket exemption
20 certificate, if that period is agreed to by the taxpayer and the
21 purchaser.

22 Sec. 31. (1) If a taxpayer claims an exemption from the tax
23 levied under this act, the taxpayer shall obtain information
24 identifying the purchaser and the basis for the claim of exemption
25 at the time the services are provided or at a later date.

26 (2) A taxpayer shall maintain a record of all exempt
27 transactions and shall provide that record to the department upon

1 request.

2 Sec. 33. A taxpayer that fails to comply with the provisions
3 of this act is guilty of a misdemeanor punishable by a fine of not
4 less than \$1,000.00 or more than \$5,000.00, and upon a second or
5 subsequent offense by imprisonment for not more than 1 year or a
6 fine of not less than \$5,000.00 or more than \$50,000.00, or both.

7 Sec. 35. All of the following apply to a purchaser who makes a
8 statement to a service provider or provides a certificate to a
9 service provider, incorrectly indicating that the provision of a
10 service is not subject to the tax levied under this act:

11 (a) Is personally liable for the tax levied under this act,
12 together with penalty and interest on the tax. The purchaser shall
13 file a return and pay the tax in the same manner as provided in
14 section 15.

15 (b) Is subject, at the department's discretion, to an
16 additional penalty of 100% of the tax due or \$1,000.00, whichever
17 is greater.

18 Sec. 37. The department shall deposit all money collected
19 under this act as follows:

20 (a) For the fiscal year ending September 30, 2007, 64.3% in
21 the state treasury to the credit of the general fund and 35.7% in
22 the school aid fund established in section 11 of article IX of the
23 state constitution of 1963.

24 (b) For the fiscal year ending September 30, 2008, 50.9% in
25 the state treasury to the credit of the general fund, 39.4% in the
26 school aid fund established in section 11 of article IX of the
27 state constitution of 1963, and 9.7% in the Michigan medicaid

1 benefits trust fund created in the Michigan trust fund act, 2000 PA
2 489, MCL 12.251 to 12.260.

3 (c) For the fiscal year ending September 30, 2009 and each
4 fiscal year thereafter, 64.3% in the state treasury to the credit
5 of the general fund and 35.7% in the school aid fund established in
6 section 11 of article IX of the state constitution of 1963.

7 Sec. 39. There is appropriated from the general fund to the
8 department for the fiscal year ending September 30, 2007 the sum of
9 \$3,000,000.00 for the purpose of administering and enforcing the
10 requirements of this act.

11 Sec. 41. This act takes effect June 1, 2007.