

HOUSE BILL No. 5353

September 10, 2009, Introduced by Rep. Cushingberry and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 3a, 4, 4a, 4d, 4k, and 9a (MCL 205.93a,
205.94, 205.94a, 205.94d, 205.94k, and 205.99a), sections 3a and 4d
as amended by 2008 PA 439, section 4 as amended by 2008 PA 314,
section 4a as amended by 2004 PA 172, section 4k as amended by 2006
PA 18, and section 9a as amended by 2007 PA 104.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3a. (1) The use or consumption of the following services
2 is taxed under this act in the same manner as tangible personal
3 property is taxed under this act:

4 (a) Except as provided in section 3b, intrastate
5 telecommunications services that both originate and terminate in
6 this state, including, but not limited to, intrastate private

1 communications services, ancillary services, conference bridging
2 service, **FIXED WIRELESS SERVICE, 800 SERVICE**, 900 service, pay
3 telephone service other than coin-operated telephone service, and
4 value-added nonvoice data service, but excluding ~~800 service, coin-~~
5 ~~operated telephone service, fixed wireless service, 1-way paging~~
6 service, prepaid calling service, telecommunications nonrecurring
7 charges, and directory advertising proceeds.

8 (b) Rooms or lodging furnished by hotelkeepers, motel
9 operators, and other persons furnishing accommodations that are
10 available to the public on the basis of a commercial and business
11 enterprise, irrespective of whether or not membership is required
12 for use of the accommodations, except rooms and lodging rented for
13 a continuous period of more than 1 month. As used in this act,
14 "hotel" or "motel" means a building or group of buildings in which
15 the public may obtain accommodations for a consideration,
16 including, without limitation, such establishments as inns, motels,
17 tourist homes, tourist houses or courts, lodging houses, rooming
18 houses, nudist camps, apartment hotels, resort lodges and cabins,
19 camps operated by other than nonprofit organizations but not
20 including those licensed under 1973 PA 116, MCL 722.111 to 722.128,
21 and any other building or group of buildings in which
22 accommodations are available to the public, except accommodations
23 rented for a continuous period of more than 1 month and
24 accommodations furnished by hospitals or nursing homes.

25 (c) Except as provided in section 3b, interstate **OR**
26 **INTERNATIONAL** telecommunications services that either originate or
27 terminate in this state and for which the charge for the service is

1 billed to a service address in this state or phone number by the
 2 provider either within or outside this state including, but not
 3 limited to, ancillary services, conference bridging service,
 4 **PRIVATE COMMUNICATIONS SERVICE, FIXED WIRELESS SERVICE, 800**
 5 **SERVICE,** 900 service, pay telephone service other than coin-
 6 operated telephone service, and value-added nonvoice data services,
 7 but excluding ~~interstate private communications service, 800~~
 8 ~~service, coin-operated telephone service, fixed wireless service,~~
 9 1-way paging service, prepaid calling service, **AND**
 10 telecommunications nonrecurring charges. ~~and international~~
 11 ~~telecommunications service.~~

12 (d) The laundering or cleaning of textiles under a sale,
 13 rental, or service agreement with a term of at least 5 days. This
 14 subdivision does not apply to the laundering or cleaning of
 15 textiles used by a restaurant or retail sales business. As used in
 16 this subdivision, "restaurant" means a food service establishment
 17 defined and licensed under the food law of 2000, 2000 PA 92, MCL
 18 289.1101 to 289.8111.

19 (e) The transmission and distribution of electricity, whether
 20 the electricity is purchased from the delivering utility or from
 21 another provider, if the sale is made to the consumer or user of
 22 the electricity for consumption or use rather than for resale.

23 (f) For a manufacturer who affixes its product to real estate
 24 and maintains an inventory of its product that is available for
 25 sale to others or who makes its product available for sale to
 26 others by publication or price list, the direct production costs
 27 and indirect production costs of the product affixed to the real

1 estate that are incident to and necessary for production or
2 manufacturing operations or processes, as defined by the
3 department.

4 (g) For a manufacturer who affixes its product to real estate
5 but does not maintain an inventory of its product available for
6 sale to others or make its product available for sale to others by
7 publication or price list, the sum of the materials cost of the
8 property and the cost of labor to manufacture, fabricate, or
9 assemble the property, but not the cost of labor to cut, bend,
10 assemble, or attach the property at the site for affixation to real
11 estate.

12 (2) If charges for intrastate telecommunications services or
13 telecommunications services between this state and another state
14 and other billed services not subject to the tax under this act are
15 aggregated with and not separately stated from charges for
16 telecommunications services that are subject to the tax under this
17 act, the nontaxable telecommunications services and other
18 nontaxable billed services are subject to the tax under this act
19 unless the service provider can reasonably identify charges for
20 telecommunications services not subject to the tax under this act
21 from its books and records that are kept in the regular course of
22 business.

23 (3) If charges for intrastate telecommunications services or
24 telecommunications services between this state and another state
25 and other billed services not subject to the tax under this act are
26 aggregated with and not separately stated from telecommunications
27 services that are subject to the tax under this act, a customer may

1 not rely upon the nontaxability of those telecommunications
2 services and other billed services unless the customer's service
3 provider separately states the charges for nontaxable
4 telecommunications services and other nontaxable billed services
5 from taxable telecommunications services or the service provider
6 elects, after receiving a written request from the customer in the
7 form required by the provider, to provide verifiable data based
8 upon the service provider's books and records that are kept in the
9 regular course of business that reasonably identify the nontaxable
10 services.

11 (4) All of the following apply in the case of a bundled
12 transaction that includes telecommunications service, ancillary
13 service, internet access, or audio or video programming:

14 (a) If the purchase price is attributable to products that are
15 taxable and products that are nontaxable, the portion of the
16 purchase price attributable to the nontaxable products may be
17 subject to tax unless the provider can identify by reasonable and
18 verifiable standards that portion from its books and records that
19 are kept in the regular course of business for other purposes,
20 including, but not limited to, nontax purposes.

21 (b) The provisions of this subsection apply unless otherwise
22 provided by federal law.

23 (5) As used in this section:

24 (a) "Ancillary services" means services that are associated
25 with or incidental to the provision of telecommunications services,
26 including, but not limited to, detailed telecommunications billing,
27 directory assistance, vertical service, and voice mail services.

1 (b) "Bundled transaction" means the purchase of 2 or more
2 distinct and identifiable products, except real property and
3 services to real property, where the products are sold for a single
4 nonitemized price. A bundled transaction does not include the sale
5 of any products in which the sales price varies, or is negotiable,
6 based on the selection by the purchaser of the products included in
7 the transaction. As used in this subdivision:

8 (i) "Distinct and identifiable products" does not include any
9 of the following:

10 (A) Packaging, such as containers, boxes, sacks, bags, and
11 bottles or other materials such as wrapping, labels, tags, and
12 instruction guides, that accompany the purchase of the products and
13 are incidental or immaterial to the purchase of the products,
14 including grocery sacks, shoeboxes, dry cleaning garment bags, and
15 express delivery envelopes and boxes.

16 (B) A product provided free of charge with the required
17 purchase of another product. A product is provided free of charge
18 if the sales price of the product purchased does not vary depending
19 on the inclusion of the product provided free of charge.

20 (C) Items included in purchase price.

21 (ii) "Purchase price" means the price paid by the seller for
22 the property.

23 (iii) "Sales price" means that term as defined in section 1 of
24 the general sales tax act, 1933 PA 167, MCL 205.51.

25 (iv) "Single nonitemized price" does not include a price that
26 is separately identified by product on binding sales or other
27 supporting sales-related documentation made available to the

1 purchaser in paper or electronic form, including, but not limited
2 to, an invoice, bill of sale, receipt, contract, service agreement,
3 lease agreement, periodic notice of rates and services, rate card,
4 or price list.

5 (v) Bundled transaction does not include any of the following:

6 (A) The purchase of tangible personal property and a service
7 if the tangible personal property is essential to the use of the
8 service and is provided exclusively in connection with the service
9 and the true object of the transaction is the service.

10 (B) The purchase of services if 1 service is provided that is
11 essential to the use or receipt of a second service and the first
12 service is provided exclusively in connection with the second
13 service and the true object of the transaction is the second
14 service.

15 (C) A transaction that includes taxable and nontaxable
16 products and the purchase price of the taxable products is de
17 minimis. As used in this sub-subparagraph, "de minimis" means the
18 seller's purchase price or sales price of the taxable products is
19 10% or less of the total purchase price or sales price of the
20 products. A seller shall use the full term of a service contract to
21 determine if the taxable products are de minimis. A seller shall
22 use either the purchase price or the sales price of the products to
23 determine if the taxable products are de minimis. A seller shall
24 not use a combination of the purchase price and sales price of the
25 products to determine if the taxable products are de minimis.

26 (D) The retail sale of exempt tangible personal property and
27 taxable tangible personal property if all of the following

1 conditions are satisfied:

2 (I) The transaction includes food and food ingredients,
3 prescription or over-the-counter drugs, durable medical equipment,
4 mobility enhancing equipment, medical supplies, or prosthetic
5 devices.

6 (II) Where the seller's purchase price or sales price of the
7 taxable tangible personal property is 50% or less of the total
8 purchase price or sales price of the bundled tangible personal
9 property. A seller may not use a combination of the purchase price
10 and sales price of the tangible personal property when making the
11 50% determination for a transaction.

12 (c) "Coin-operated telephone service" means a
13 telecommunications service paid for by inserting money into a
14 telephone that accepts direct deposits of money to operate.

15 (d) "Conference bridging service" means an ancillary service
16 that links 2 or more participants of an audio or video conference
17 call and may include the provision of a telephone number, but does
18 not include the telecommunications services used to reach the
19 conference bridge.

20 (e) "Detailed telecommunications billing service" means an
21 ancillary service of separately stating information pertaining to
22 individual calls on a customer's billing statement.

23 (f) "Directory assistance" means an ancillary service of
24 providing telephone number information or address information.

25 (g) "Fabricate" means to modify or prepare tangible personal
26 property for affixation or assembly.

27 (h) "Fixed wireless service" means a telecommunications

1 service that provides radio communication between fixed points.

2 (i) "International" means a telecommunications service that
3 originates or terminates in the United States and terminates or
4 originates outside the United States, respectively. United States
5 includes the District of Columbia and any possession or territory
6 of the United States.

7 (j) "Interstate" means a telecommunications service that
8 originates in 1 United States state, territory, or possession and
9 terminates in a different United States state, territory, or
10 possession.

11 (k) "Intrastate" means a telecommunications service that
12 originates in a United States state, territory, or possession and
13 terminates in the same United States state, territory, or
14 possession.

15 (l) "Manufacture" means to convert or condition tangible
16 personal property by changing the form, composition, quality,
17 combination, or character of the property.

18 (m) "Manufacturer" means a person who manufactures,
19 fabricates, or assembles tangible personal property.

20 (n) "Paging service" means a telecommunications service that
21 provides transmission of coded radio signals for the purpose of
22 activating specific pagers, which may include messages or sounds.

23 (o) "Pay telephone service" means a telecommunications service
24 provided through any pay telephone.

25 (p) "Prepaid calling service" means the right to access
26 exclusively telecommunications services that must be paid for in
27 advance and that enables the origination of calls using an access

1 number or authorization code, whether manually or electronically
2 dialed, and that is sold in predetermined units or dollars that
3 decline with use in a known amount.

4 (q) "Private communications service" means a
5 telecommunications service that entitles the customer to exclusive
6 or priority use of a communications channel or group of channels
7 between or among termination points, regardless of the manner in
8 which that channel or group of channels are connected, and includes
9 switching capacity, extension lines, stations, and any other
10 associated services that are provided in connection with the use of
11 that channel or group of channels.

12 (r) "Telecommunications nonrecurring charges" means an amount
13 billed for the installation, connection, change, or initiation of
14 telecommunications service received by the customer.

15 (s) "Telecommunications service" means the electronic
16 transmission, conveyance, or routing of voice, data, audio, video,
17 or any other information or signals to a point, or between or among
18 points, including a transmission, conveyance, or routing in which
19 computer processing applications are used to act on the form, code,
20 or protocol of the content for purposes of transmission,
21 conveyance, or routing without regard to whether that service is
22 referred to as voice over internet protocol services or is
23 classified by the federal communications commission as enhanced or
24 value added. Telecommunications service does not include any of the
25 following:

26 (i) Data processing and information services that allow data to
27 be generated, acquired, stored, processed, or retrieved and

1 delivered by an electronic transmission to a purchaser where the
2 purchaser's primary purpose for the underlying transaction is the
3 processed data or information.

4 (ii) Installation or maintenance of wiring or equipment on a
5 customer's premises.

6 (iii) Tangible personal property.

7 (iv) Advertising, including, but not limited to, directory
8 advertising.

9 (v) Billing and collection services provided to third parties.

10 (vi) Internet access service.

11 (vii) Radio and television audio and video programming
12 services, including, but not limited to, cable service as defined
13 in 47 USC 522(6) and audio and video programming services delivered
14 by commercial mobile radio service providers as defined in 47 CFR
15 20.3, regardless of the medium, including the furnishing of
16 transmission, conveyance, and routing of those services by the
17 programming service provider.

18 (viii) Ancillary services.

19 (ix) Answering services, if the primary purpose of the
20 transaction is the answering service rather than message
21 transmission.

22 (x) Digital products delivered electronically, including, but
23 not limited to, software, music, video, reading materials, or ring
24 tones.

25 (t) "Value-added nonvoice data service" means a
26 telecommunications service in which computer processing
27 applications are used to act on the form, content, code, or

1 protocol of the information or data primarily for a purpose other
2 than transmission, conveyance, or routing.

3 (u) "Vertical service" means an ancillary service that is
4 offered in connection with 1 or more telecommunications services
5 that offers advanced calling features that allow customers to
6 identify callers and to manage multiple calls and call connections,
7 including conference bridging services.

8 (v) "Voice mail service" means an ancillary service that
9 enables the customer to store, send, or receive recorded messages,
10 but does not include any vertical services that the customer may be
11 required to have in order to utilize the voice mail service.

12 (w) "800 service" means a telecommunications service that
13 allows a caller to dial a toll-free number without incurring a
14 charge for the call, typically marketed under the designation
15 "800", "855", "866", "877", or "888" toll-free calling, or any
16 subsequent number designated by the federal communications
17 commission.

18 (x) "900 service" means an inbound toll telecommunications
19 service purchased by a subscriber that allows the subscriber's
20 customers to call in to the subscriber's prerecorded announcement
21 or live service, typically marketed under the designation "900"
22 service, and any subsequent number designated by the federal
23 communications commission, but does not include a charge for
24 collection services provided by the seller of the
25 telecommunications services to the subscriber, or the service or
26 product sold by the subscriber to the subscriber's customer.

27 Sec. 4. (1) The following are exempt from the tax levied under

1 this act, subject to subsection (2):

2 (a) Property sold in this state on which transaction a tax is
3 paid under the general sales tax act, 1933 PA 167, MCL 205.51 to
4 205.78, if the tax was due and paid on the retail sale to a
5 consumer.

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

9 (c) All of the following:

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

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

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

1 purposes:

2 (A) 0 to 25, 2 units.

3 (B) 26 to 100, 7 units.

4 (C) 101 to 500, 20 units.

5 (D) 501 or more, 25 units.

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

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

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

26 (f) Property sold to a person engaged in a business enterprise
27 and using and consuming the property in the tilling, planting,

1 caring for, or harvesting of the things of the soil or in the
2 breeding, raising, or caring for livestock, poultry, or
3 horticultural products, including transfers of livestock, poultry,
4 or horticultural products for further growth. This exemption
5 includes machinery that is capable of simultaneously harvesting
6 grain or other crops and biomass and machinery used for the purpose
7 of harvesting biomass. This exemption includes agricultural land
8 tile, which means fired clay or perforated plastic tubing used as
9 part of a subsurface drainage system for land used in the
10 production of agricultural products as a business enterprise and
11 includes a portable grain bin, which means a structure that is used
12 or is to be used to shelter grain and that is designed to be
13 disassembled without significant damage to its component parts.
14 This exemption does not include transfers of food, fuel, clothing,
15 or similar tangible personal property for personal living or human
16 consumption. This exemption does not include tangible personal
17 property permanently affixed to and becoming a structural part of
18 real estate. As used in this subdivision, "biomass" means crop
19 residue used to produce energy or agricultural crops grown
20 specifically for the production of energy.

21 (g) Property or services sold to the United States, an
22 unincorporated agency or instrumentality of the United States, an
23 incorporated agency or instrumentality of the United States wholly
24 owned by the United States or by a corporation wholly owned by the
25 United States, the American red cross and its chapters or branches,
26 this state, a department or institution of this state, or a
27 political subdivision of this state.

1 (h) Property or services sold to a school, hospital, or home
2 for the care and maintenance of children or aged persons, operated
3 by an entity of government, a regularly organized church,
4 religious, or fraternal organization, a veterans' organization, or
5 a corporation incorporated under the laws of this state, if not
6 operated for profit, and if the income or benefit from the
7 operation does not inure, in whole or in part, to an individual or
8 private shareholder, directly or indirectly, and if the activities
9 of the entity or agency are carried on exclusively for the benefit
10 of the public at large and are not limited to the advantage,
11 interests, and benefits of its members or a restricted group. The
12 tax levied does not apply to property or services sold to a parent
13 cooperative preschool. As used in this subdivision, "parent
14 cooperative preschool" means a nonprofit, nondiscriminatory
15 educational institution, maintained as a community service and
16 administered by parents of children currently enrolled in the
17 preschool that provides an educational and developmental program
18 for children younger than compulsory school age, that provides an
19 educational program for parents, including active participation
20 with children in preschool activities, that is directed by
21 qualified preschool personnel, and that is licensed pursuant to
22 1973 PA 116, MCL 722.111 to 722.128.

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

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

27 (ii) Sales of vehicles licensed for use on the public highways

1 other than a passenger van or bus with a manufacturer's rated
2 seating capacity of 10 or more that is used primarily for the
3 transportation of persons for religious purposes.

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

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

13 (l) A newspaper ~~or periodical~~ classified under federal postal
14 laws and regulations effective September 1, 1985 as second-class
15 mail matter or as a controlled circulation publication or qualified
16 to accept legal notices for publication in this state, as defined
17 by law, or any other newspaper or periodical of general
18 circulation, established at least 2 years, and published at least
19 once a week, and a copyrighted motion picture film **OR, BEFORE**
20 **OCTOBER 1, 2007, A PERIODICAL CLASSIFIED UNDER FEDERAL POSTAL LAWS**
21 **AND REGULATIONS EFFECTIVE SEPTEMBER 1, 1985 AS SECOND-CLASS MAIL**
22 **MATTER.** Tangible personal property used or consumed in producing a
23 copyrighted motion picture film, a newspaper published more than 14
24 times per year, or a periodical published more than 14 times per
25 year, and not becoming a component part of that film, newspaper, or
26 periodical is subject to the tax **LEVIED UNDER THIS ACT.** After
27 December 31, 1993, tangible personal property used or consumed in

1 producing a newspaper published 14 times or less per year or a
2 periodical published 14 times or less per year and that portion or
3 percentage of tangible personal property used or consumed in
4 producing an advertising supplement that becomes a component part
5 of a newspaper or periodical is exempt from the tax under this
6 subdivision. A claim for a refund for taxes paid before January 1,
7 1999 under this subdivision shall be made before June 30, 1999. For
8 purposes of this subdivision, tangible personal property that
9 becomes a component part of a newspaper or periodical and
10 consequently not subject to tax, includes an advertising supplement
11 inserted into and circulated with a newspaper or periodical that is
12 otherwise exempt from tax under this subdivision, if the
13 advertising supplement is delivered directly to the newspaper or
14 periodical by a person other than the advertiser, or the
15 advertising supplement is printed by the newspaper or periodical.

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

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

27 (o) A vehicle for which a special registration is secured in

1 accordance with section 226(9) of the Michigan vehicle code, 1949
2 PA 300, MCL 257.226.

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

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

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

11 (s) ~~Tangible~~ **BEFORE OCTOBER 1, 2009, TANGIBLE** personal
12 property purchased and installed as a component part of a water
13 pollution control facility for which a tax exemption certificate is
14 issued pursuant to part 37 of the natural resources and
15 environmental protection act, 1994 PA 451, MCL 324.3701 to
16 324.3708, or an air pollution control facility for which a tax
17 exemption certificate is issued pursuant to part 59 of the natural
18 resources and environmental protection act, 1994 PA 451, MCL
19 324.5901 to 324.5908.

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

24 (u) The storage, use, or consumption of an aircraft by a
25 domestic air carrier for use solely in the transport of air cargo,
26 passengers, or a combination of air cargo and passengers, that has
27 a maximum certificated takeoff weight of at least 6,000 pounds. For

1 purposes of this subdivision, the term "domestic air carrier" is
2 limited to a person engaged primarily in the commercial transport
3 for hire of air cargo, passengers, or a combination of air cargo
4 and passengers as a business activity. The state treasurer shall
5 estimate on January 1 each year the revenue lost by this act from
6 the school aid fund and deposit that amount into the school aid
7 fund from the general fund.

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

13 (w) Property or services sold to an organization not operated
14 for profit and exempt from federal income tax under section
15 501(c)(3) or 501(c)(4) of the internal revenue code, 26 USC 501; or
16 to a health, welfare, educational, cultural arts, charitable, or
17 benevolent organization not operated for profit that has been
18 issued before June 13, 1994 an exemption ruling letter to purchase
19 items exempt from tax signed by the administrator of the sales,
20 use, and withholding taxes division of the department. The
21 department shall reissue an exemption letter after June 13, 1994 to
22 each of those organizations that had an exemption letter that shall
23 remain in effect unless the organization fails to meet the
24 requirements that originally entitled it to this exemption. The
25 exemption does not apply to sales of tangible personal property and
26 sales of vehicles licensed for use on public highways, that are not
27 used primarily to carry out the purposes of the organization as

1 stated in the bylaws or articles of incorporation of the exempt
2 organization.

3 (x) The use or consumption of services described in section
4 3a(1)(a) or (b) or 3b by means of a prepaid telephone calling card,
5 a prepaid authorization number for telephone use, or a charge for
6 internet access.

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

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

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

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

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

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

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

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

27 (2) The property or services under subsection (1) are exempt

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

5 Sec. 4a. The following are exempt from the tax under this act:

6 (a) Rental receipts if the tangible personal property rented
7 or leased was previously subject to 1 of the following when
8 purchased by the lessor:

9 (i) This act.

10 (ii) The general sales tax act, 1933 PA 167, MCL 205.51 to
11 205.78.

12 (b) Rental receipts if the tangible personal property rented
13 or leased was previously taxed under a sales or use tax act of
14 another state or a political subdivision of another state levied at
15 a rate of 6% or more.

16 (c) Specific charges for technical support or for adapting or
17 modifying prewritten computer software programs to a purchaser's
18 needs or equipment if those charges are separately stated and
19 identified.

20 (d) The sale of computer software originally designed for the
21 exclusive use and special needs of the purchaser.

22 (e) The sale of a commercial advertising element if the
23 commercial advertising element is used to create or develop a
24 print, radio, television, or other advertisement, the commercial
25 advertising element is discarded or returned to the provider after
26 the advertising message is completed, and the commercial
27 advertising element is custom developed by the provider for the

1 purchaser. As used in this subdivision, "commercial advertising
2 element" means a negative or positive photographic image, an
3 audiotape or videotape master, a layout, a manuscript, writing of
4 copy, a design, artwork, an illustration, retouching, and
5 mechanical or keyline instructions. This exemption does not include
6 black and white or full color process separation elements, an
7 audiotape reproduction, or a videotape reproduction.

8 (f) The sale of oxygen for human use dispensed pursuant to a
9 prescription.

10 (g) The sale of insulin for human use.

11 (h) ~~A-BEFORE OCTOBER 1, 2009, A~~ meal provided free of charge
12 or at a reduced rate to an employee during work hours by a food
13 service establishment licensed ~~by the department of agriculture~~
14 **UNDER THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

15 (i) The sale of diesel fuel to a person who is an interstate
16 motor carrier for use in a qualified commercial motor vehicle.

17 Sec. 4d. (1) The following are exempt from the tax under this
18 act:

19 (a) Sales of drugs for human use that can only be legally
20 dispensed by prescription or food or food ingredients, except
21 prepared food intended for immediate human consumption **AND, AFTER**
22 **OCTOBER 1, 2009, FOOD AND FOOD INGREDIENTS SOLD FROM A VENDING**
23 **MACHINE.**

24 (b) The deposit on a returnable container for a beverage or
25 the deposit on a carton or case that is used for returnable
26 containers.

27 (c) Food or tangible personal property purchased under the

1 federal food stamp program or meals sold by a person exempt from
2 the tax under this act eligible to be purchased under the federal
3 food stamp program.

4 (d) Fruit or vegetable seeds and fruit or vegetable plants if
5 purchased at a place of business authorized to accept food stamps
6 by the food and nutrition service of the United States department
7 of agriculture or a place of business that has made a complete and
8 proper application for authorization to accept food stamps but has
9 been denied authorization and provides proof of denial to the
10 department of treasury.

11 (e) Live animals purchased with the intent to be slaughtered
12 for human consumption.

13 (2) ~~Food~~ **BEFORE OCTOBER 1, 2009, FOOD** or drink heated or
14 cooled mechanically, electrically, or by other artificial means to
15 an average temperature above 75 degrees Fahrenheit or below 65
16 degrees Fahrenheit before sale and sold from a vending machine,
17 except milk, nonalcoholic beverages in a sealed container, and
18 fresh fruit, is subject to the tax under this act. The tax due
19 under this act on the sale of food or drink from a vending machine
20 selling both taxable items and items exempt under this subsection
21 shall be calculated under this act after December 31, 1994 based on
22 1 of the following as determined by the taxpayer:

23 (a) Actual gross proceeds from sales at retail.

24 (b) Forty-five percent of proceeds from the sale of items
25 subject to tax under this act or exempt from the tax levied under
26 this act, other than from the sale of carbonated beverages.

27 (3) "Food and food ingredients" means substances, whether in

1 liquid, concentrated, solid, frozen, dried, or dehydrated form,
2 that are sold for ingestion or chewing by humans and are consumed
3 for their taste or nutritional value. Food and food ingredients do
4 not include alcoholic beverages and tobacco.

5 (4) "Prepared food" means the following:

6 (a) Food sold in a heated state or that is heated by the
7 seller.

8 (b) Two or more food ingredients mixed or combined by the
9 seller for sale as a single item.

10 (c) Food sold with eating utensils provided by the seller,
11 including knives, forks, spoons, glasses, cups, napkins, straws, or
12 plates, but not including a container or packaging used to
13 transport the food.

14 (5) Prepared food does not include the following:

15 (a) Food that is only cut, repackaged, or pasteurized by the
16 seller.

17 (b) Raw eggs, fish, meat, poultry, and foods containing those
18 raw items requiring cooking by the consumer in recommendations
19 contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001
20 food code published by the food and drug administration of the
21 public health service of the department of health and human
22 services, to prevent foodborne illness.

23 (c) Food sold in an unheated state by weight or volume as a
24 single item, without eating utensils.

25 (d) Bakery items, including bread, rolls, buns, biscuits,
26 bagels, croissants, pastries, doughnuts, danish, cakes, tortes,
27 pies, tarts, muffins, bars, cookies, and tortillas, sold without

1 eating utensils.

2 (6) "Prepared food intended for immediate **HUMAN** consumption"
3 means prepared food **AND, AFTER OCTOBER 1, 2009, FOOD AND FOOD**
4 **INGREDIENTS SOLD FROM A VENDING MACHINE.**

5 Sec. 4k. (1) The tax levied under this act does not apply to
6 parts and materials, excluding shop equipment or fuel, affixed to
7 or to be affixed to an aircraft owned or used by a domestic air
8 carrier that is any of the following:

9 (a) An aircraft for use solely in the transport of air cargo
10 or a combination of air cargo and passengers that has a maximum
11 certificated takeoff weight of at least 12,500 pounds for taxes
12 levied before January 1, 1997 and at least 6,000 pounds for taxes
13 levied after December 31, 1996.

14 (b) An aircraft that is used solely in the regularly scheduled
15 transport of passengers.

16 (c) An aircraft other than an aircraft described in
17 subdivision (b), that has a maximum certificated takeoff weight of
18 at least 12,500 pounds for taxes levied before January 1, 1997 and
19 at least 6,000 pounds for taxes levied after December 31, 1996, and
20 that is designed to have a maximum passenger seating configuration
21 of more than 30 seats and is used solely in the transport of
22 passengers.

23 (2) The tax levied under this act does not apply to the sale
24 of parts or materials, excluding shop equipment or fuel, affixed or
25 to be affixed to an aircraft that meets all of the following
26 conditions:

27 (a) The aircraft leaves this state within 15 days after the

1 sooner of the issuance of the final billing or authorized approval
2 for final return to service, completion of the maintenance record
3 entry, and completion of the test flight and ground test for
4 inspection as required under 14 CFR 91.407.

5 (b) The aircraft was not based in this state or registered in
6 this state before the parts or materials are affixed to the
7 aircraft and the aircraft is not based in this state or registered
8 in this state after the parts or materials are affixed to the
9 aircraft.

10 (3) The tax levied under this act does not apply to the sale
11 of an aircraft temporarily located in this state for the purpose of
12 prepurchase evaluation or the purpose of prepurchase evaluation and
13 postsale customization if all of the following conditions are
14 satisfied:

15 (a) The aircraft leaves this state within 15 days after
16 authorized approval for final return to service, completion of the
17 maintenance record entry, and completion of the test flight and
18 ground test for inspection as required under 14 CFR 91.407.

19 (b) The aircraft was not based in this state or registered in
20 this state before the prepurchase evaluation or prepurchase
21 evaluation and postsale customization are completed and the
22 aircraft is not based in this state or registered in this state
23 after the prepurchase evaluation or prepurchase evaluation and
24 postsale customization are completed.

25 (4) For taxes levied after December 31, 1992 **AND BEFORE**
26 **OCTOBER 1, 2009**, the tax levied under this act does not apply to
27 the storage, use, or consumption of rolling stock used in

1 interstate commerce and purchased, rented, or leased by an
2 interstate fleet motor carrier. A refund for taxes paid before
3 January 1, 1997 shall not be paid under this subsection if the
4 refund claim is made after June 30, 1997.

5 (5) For taxes levied after December 31, 1996 and before May 1,
6 1999, the tax levied under this act does not apply to the product
7 of the out-of-state usage percentage and the price otherwise
8 taxable under this act of a qualified truck or a trailer designed
9 to be drawn behind a qualified truck, purchased, rented, or leased
10 in this state by an interstate fleet motor carrier and used in
11 interstate commerce.

12 (6) As used in this section:

13 (a) "Based in this state" means hangared or stored in this
14 state for not less than 10 days in not less than 3 nonconsecutive
15 months during the immediately preceding 12-month period.

16 (b) "Domestic air carrier" means a person engaged primarily in
17 the commercial transport for hire of air cargo, passengers, or a
18 combination of air cargo and passengers as a business activity.

19 (c) "Interstate fleet motor carrier" means a person engaged in
20 the business of carrying persons or property, other than
21 themselves, their employees, or their own property, for hire across
22 state lines, whose fleet mileage was driven at least 10% outside of
23 this state in the immediately preceding tax year.

24 (d) "Out-of-state usage percentage" is a fraction, the
25 numerator of which is the number of miles driven outside of this
26 state in the immediately preceding tax year by qualified trucks
27 used by the taxpayer and the denominator of which is the total

1 miles driven in the immediately preceding tax year by qualified
2 trucks used by the taxpayer. Miles driven by qualified trucks used
3 solely in intrastate commerce shall not be included in calculating
4 the out-of-state usage percentage.

5 (e) "Prepurchase evaluation" means an examination of an
6 aircraft to provide a potential purchaser with information relevant
7 to the potential purchase.

8 (f) "Postsale customization" means any improvement,
9 maintenance, or repair that is performed on an aircraft following a
10 transfer of ownership of the aircraft.

11 (g) "Qualified truck" means a commercial motor vehicle power
12 unit that has 2 axles and a gross vehicle weight rating in excess
13 of 10,000 pounds or a commercial motor vehicle power unit that has
14 3 or more axles.

15 (h) "Registered in this state" means an aircraft registered
16 with the state transportation department, bureau of aeronautics or
17 registered with the federal aviation administration to an address
18 located in this state.

19 (i) "Rolling stock" means a qualified truck, a trailer
20 designed to be drawn behind a qualified truck, and parts affixed to
21 either a qualified truck or a trailer designed to be drawn behind a
22 qualified truck.

23 Sec. 9a. (1) In computing the amount of tax levied under this
24 act for any month **PRIOR TO OCTOBER 1, 2009**, a seller may deduct the
25 amount of bad debts from his or her gross sales, rentals, or
26 services used for the computation of the tax. **IN COMPUTING THE**
27 **AMOUNT OF TAX LEVIED UNDER THIS ACT FOR ANY MONTH AFTER SEPTEMBER**

1 30, 2009, A TAXPAYER MAY DEDUCT 80% OF THE AMOUNT OF BAD DEBTS FROM
2 HIS OR HER GROSS PROCEEDS USED FOR THE COMPUTATION OF THE TAX. The
3 amount of gross sales, rentals, or services deducted must be
4 charged off as uncollectible on the books and records of the seller
5 at the time the debt becomes worthless and deducted on the return
6 for the period during which the bad debt is written off as
7 uncollectible in the claimant's books and records and must be
8 eligible to be deducted for federal income tax purposes. For
9 purposes of this section, a claimant who is not required to file a
10 federal income tax return may deduct a bad debt on a return filed
11 for the period in which the bad debt becomes worthless and is
12 written off as uncollectible in the claimant's books and records
13 and would be eligible for a bad debt deduction for federal income
14 tax purposes if the claimant was required to file a federal income
15 tax return. If a consumer or other person pays all or part of a bad
16 debt with respect to which a seller claimed a deduction under this
17 section, the seller is liable for the amount of taxes deducted in
18 connection with that portion of the debt for which payment is
19 received and shall remit these taxes in his or her next payment to
20 the department. Any payments made on a bad debt shall be applied
21 proportionally first to the taxable price of the property and the
22 tax on the property and second to any interest, service, or other
23 charge.

24 (2) Any claim for a bad debt deduction under this section
25 shall be supported by that evidence required by the department. The
26 department shall review any change in the rate of taxation
27 applicable to any taxable sales, rentals, or services by a seller

1 claiming a deduction pursuant to this section and shall ensure that
2 the deduction on any bad debt does not result in the seller
3 claiming the deduction recovering any more or less than the taxes
4 imposed on the sale, rental, or service that constitutes the bad
5 debt.

6 (3) After September 30, 2009, if a taxpayer who reported the
7 tax and a lender execute and maintain a written election
8 designating which party may claim the deduction, a claimant is
9 entitled to a deduction or refund of the tax related to a sale at
10 retail that was previously reported and paid if all of the
11 following conditions are met:

12 (a) No deduction or refund was previously claimed or allowed
13 on any portion of the account receivable.

14 (b) The account receivable has been found worthless and
15 written off by the taxpayer that made the sale or the lender on or
16 after September 30, 2009.

17 (4) If a certified service provider assumed filing
18 responsibility under the streamlined sales and use tax
19 administration act, 2004 PA 174, MCL 205.801 to 205.833, the
20 certified service provider may claim, on behalf of the seller, any
21 bad debt allowable to the seller and shall credit or refund that
22 amount of bad debt allowed or refunded to the seller.

23 (5) If the books and records of a seller under the streamlined
24 sales and use tax agreement under the streamlined sales and use tax
25 administration act, 2004 PA 174, MCL 205.801 to 205.833, that
26 claims a bad debt allowance support an allocation of the bad debts
27 among member states of that agreement, the seller may allocate the

1 bad debts.

2 (6) As used in this section:

3 (a) "Bad debt" means any portion of a debt resulting from a
4 seller's collection of the use tax under this act on the purchase
5 of tangible personal property or services that is not otherwise
6 deductible or excludable and that is eligible to be claimed, or
7 could be eligible to be claimed if the seller kept accounts on an
8 accrual basis, as a deduction pursuant to section 166 of the
9 internal revenue code, 26 USC 166. A bad debt does not include any
10 of the following:

11 (i) Interest, finance charge, or use tax on the purchase price.

12 (ii) Uncollectible amounts on property that remains in the
13 possession of the seller until the full purchase price is paid.

14 (iii) Expenses incurred in attempting to collect any account
15 receivable or any portion of the debt recovered.

16 (iv) Any accounts receivable that have been sold to and remain
17 in the possession of a third party for collection.

18 (v) Repossessed property.

19 (b) Except as provided in subdivision (c), "lender" includes
20 any of the following:

21 (i) Any person who holds or has held an account receivable
22 which that person purchased directly from a taxpayer who reported
23 the tax.

24 (ii) Any person who holds or has held an account receivable
25 pursuant to that person's contract directly with the taxpayer who
26 reported the tax.

27 (iii) The issuer of the private label credit card.

1 (c) "Lender" does not include the issuer of a credit card or
2 instrument that can be used to make purchases from a person other
3 than the vendor whose name or logo appears on the card or
4 instrument or that vendor's affiliates.

5 (d) "Private label credit card" means any charge card, credit
6 card, or other instrument serving a similar purpose that carries,
7 refers to, or is branded with the name or logo of a vendor and that
8 can only be used for purchases from the vendor.

9 (e) "Seller" means a person who has remitted use tax directly
10 to the department on the specific sales, rental, or service
11 transaction for which the bad debt is recognized for federal income
12 tax purposes or, after September 30, 2009, a lender holding the
13 account receivable for which the bad debt is recognized, or would
14 be recognized if the claimant were a corporation, for federal
15 income tax purposes.

16 Enacting section 1. This amendatory act takes effect October
17 1, 2009.