

HOUSE BILL No. 4564

May 2, 2017, Introduced by Reps. Barrett, Lauwers, VanderWall and Rendon and referred to the Committee on Agriculture.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4 (MCL 205.94), as amended by 2016 PA 432.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

1 (c) All of the following:

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

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

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

21 (A) 0 to 25, 2 units.

22 (B) 26 to 100, 7 units.

23 (C) 101 to 500, 20 units.

24 (D) 501 or more, 25 units.

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

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

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

18 (f) Property sold to a person engaged in a business enterprise
19 ~~and using and consuming~~ **THAT USES OR CONSUMES** the property in the
20 ~~tilling, planting, draining, caring for, or harvesting of the~~
21 ~~things of the soil, in the breeding, raising, or caring for~~
22 ~~livestock, poultry, or horticultural products, including transfers~~
23 ~~of livestock, poultry, or horticultural products for further~~
24 ~~growth, or in the direct gathering of fish, by net, by line, or~~
25 ~~otherwise only by an owner-operator of the business enterprise, not~~
26 ~~including a charter fishing business enterprise. This exemption~~
27 ~~includes machinery that is capable of simultaneously harvesting~~

~~1 grain or other crops and biomass and machinery used for the purpose
2 of harvesting biomass. This exemption includes agricultural land
3 tile, which means fired clay or perforated plastic tubing used as
4 part of a subsurface drainage system for land, and subsurface
5 irrigation pipe, if the land tile or irrigation pipe is used in the
6 production of agricultural products as a business enterprise. This
7 exemption includes a portable grain bin, which means a structure
8 that is used or is to be used to shelter grain and that is designed
9 to be disassembled without significant damage to its component
10 parts. This exemption includes grain drying equipment and the fuel
11 or energy source that powers that equipment for agricultural
12 purposes. This exemption also includes tangible personal property
13 affixed to or to be affixed to and directly used in the operation
14 of either a portable grain bin or grain drying equipment. This
15 exemption also includes the sale or acquisition of agricultural
16 land tile, portable grain bins, and grain drying equipment
17 purchased or acquired by a person in the business of constructing,
18 altering, repairing, or improving real estate for others to the
19 extent that it is affixed to or made a structural part of real
20 estate used for a purpose exempt under this subsection. This
21 exemption does not include transfers of food, fuel, clothing, or
22 similar tangible personal property for personal living or human
23 consumption. Except for agricultural land tile, subsurface
24 irrigation pipe, portable grain bins, and grain drying equipment,
25 this exemption does not include tangible personal property
26 permanently affixed to and becoming a structural part of real
27 estate. As used in this subdivision, "biomass" means crop residue~~

1 ~~used to produce energy or agricultural crops grown specifically for~~
2 ~~the production of energy.~~ FOR EITHER THE TILLING, PLANTING,
3 DRAINING, CARING FOR, OR HARVESTING OF THINGS OF THE SOIL FOR
4 AGRICULTURAL PURPOSES OR THE BREEDING, RAISING, OR CARING FOR
5 LIVESTOCK, POULTRY, OR HORTICULTURAL PRODUCTS, INCLUDING THE
6 TRANSFERS OF LIVESTOCK, POULTRY, OR HORTICULTURAL PRODUCTS FOR
7 FURTHER GROWTH. EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (3),
8 THIS EXEMPTION INCLUDES THE SALE OF ANY OF THE FOLLOWING TO A
9 PERSON DESCRIBED IN THIS SUBDIVISION:

10 (i) MACHINERY THAT IS CAPABLE OF SIMULTANEOUSLY HARVESTING
11 GRAIN OR OTHER CROPS AND BIOMASS AND MACHINERY USED FOR THE PURPOSE
12 OF HARVESTING BIOMASS.

13 (ii) AGRICULTURAL LAND TILE AND SUBSURFACE IRRIGATION PIPE.

14 (iii) PORTABLE GRAIN BINS, INCLUDING TANGIBLE PERSONAL
15 PROPERTY AFFIXED OR TO BE AFFIXED TO PORTABLE GRAIN BINS AND
16 DIRECTLY USED IN THE OPERATION OF A PORTABLE GRAIN BIN.

17 (iv) GRAIN DRYING EQUIPMENT AND THE FUEL OR ENERGY SOURCE THAT
18 POWERS THAT EQUIPMENT, INCLUDING TANGIBLE PERSONAL PROPERTY AFFIXED
19 OR TO BE AFFIXED TO THAT EQUIPMENT AND DIRECTLY USED IN THE
20 OPERATION OF GRAIN DRYING EQUIPMENT.

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. Tangible
20 personal property used or consumed in producing a copyrighted
21 motion picture film, a newspaper published more than 14 times per
22 year, or a periodical published more than 14 times per year, and
23 not becoming a component part of that film, newspaper, or
24 periodical is subject to the tax. After December 31, 1993, tangible
25 personal property used or consumed in producing a newspaper
26 published 14 times or less per year or a periodical published 14
27 times or less per year and that portion or percentage of tangible

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

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

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

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

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

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

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

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

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

21 (u) The storage, use, or consumption of an aircraft by a
22 domestic air carrier for use solely in the transport of air cargo,
23 passengers, or a combination of air cargo and passengers, that has
24 a maximum certificated takeoff weight of at least 6,000 pounds. For
25 purposes of this subdivision, the term "domestic air carrier" is
26 limited to a person engaged primarily in the commercial transport
27 for hire of air cargo, passengers, or a combination of air cargo

1 and passengers as a business activity. The state treasurer shall
2 estimate on January 1 each year the revenue lost by this act from
3 the school aid fund and deposit that amount into the school aid
4 fund from the general fund.

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

10 (w) Property or services sold to an organization not operated
11 for profit and exempt from federal income tax under section
12 501(c) (3) or 501(c) (4) of the internal revenue code, 26 USC 501; or
13 to a health, welfare, educational, cultural arts, charitable, or
14 benevolent organization not operated for profit that has been
15 issued before June 13, 1994 an exemption ruling letter to purchase
16 items exempt from tax signed by the administrator of the sales,
17 use, and withholding taxes division of the department. The
18 department shall reissue an exemption letter after June 13, 1994 to
19 each of those organizations that had an exemption letter that shall
20 remain in effect unless the organization fails to meet the
21 requirements that originally entitled it to this exemption. The
22 exemption does not apply to sales of tangible personal property and
23 sales of vehicles licensed for use on public highways, that are not
24 used primarily to carry out the purposes of the organization as
25 stated in the bylaws or articles of incorporation of the exempt
26 organization.

27 (x) The use or consumption of services described in section

1 3a(1)(a) or (b) or 3b by means of a prepaid telephone calling card,
2 a prepaid authorization number for telephone use, or a charge for
3 internet access.

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

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

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

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

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

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

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

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

24 (z) Property purchased or manufactured by a person engaged in
25 the business of constructing, altering, repairing, or improving
26 real estate for others, to the extent that the property is affixed
27 to and made a structural part of real estate located in another

1 state, regardless of whether sales or use tax was due and paid in
2 the state in which the property is affixed to real estate.

3 (AA) THE SALE OF AGRICULTURAL LAND TILE, SUBSURFACE IRRIGATION
4 PIPE, PORTABLE GRAIN BINS, AND GRAIN DRYING EQUIPMENT TO A PERSON
5 IN THE BUSINESS OF CONSTRUCTING, ALTERING, REPAIRING, OR IMPROVING
6 REAL ESTATE FOR OTHERS TO THE EXTENT THAT IT IS AFFIXED TO AND MADE
7 A STRUCTURAL PART OF REAL ESTATE FOR OTHERS AND IS USED FOR AN
8 EXEMPT PURPOSE DESCRIBED UNDER SUBDIVISION (F).

9 (BB) THE SALE OF TANGIBLE PERSONAL PROPERTY USED IN THE DIRECT
10 GATHERING OF FISH, BY NET, LINE, OR OTHERWISE, BY AN OWNER-OPERATOR
11 OF A BUSINESS ENTERPRISE, NOT INCLUDING A CHARTER FISHING BUSINESS
12 ENTERPRISE.

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

18 (3) THE EXEMPTIONS UNDER SUBSECTION (1) (F), (AA), AND (BB) DO
19 NOT INCLUDE EITHER OF THE FOLLOWING:

20 (A) THE TRANSFERS OF FOOD, FUEL, CLOTHING, OR ANY SIMILAR
21 TANGIBLE PERSONAL PROPERTY FOR PERSONAL LIVING OR HUMAN
22 CONSUMPTION.

23 (B) EXCEPT AS PROVIDED UNDER SUBSECTION (1) (AA), TANGIBLE
24 PERSONAL PROPERTY PERMANENTLY AFFIXED TO AND BECOMING A STRUCTURAL
25 PART OF REAL ESTATE.

26 (4) AS USED IN THIS SECTION:

27 (A) "AGRICULTURAL LAND TILE" MEANS FIRED CLAY OR PERFORATED

1 PLASTIC TUBING USED AS PART OF A SUBSURFACE DRAINAGE SYSTEM FOR
2 LAND.

3 (B) "BIOMASS" MEANS CROP RESIDUE USED TO PRODUCE ENERGY OR
4 AGRICULTURAL CROPS GROWN SPECIFICALLY FOR THE PRODUCTION OF ENERGY.

5 (C) "PORTABLE GRAIN BIN" MEANS A STRUCTURE THAT IS USED OR IS
6 TO BE USED TO SHELTER GRAIN AND THAT IS DESIGNED TO BE DISASSEMBLED
7 WITHOUT SIGNIFICANT DAMAGE TO ITS COMPONENT PARTS.

8 Enacting section 1. This amendatory act clarifies the original
9 intent of the legislature that the exemption provided for by
10 section 4a(1)(e) of the general sales tax act, 1933 PA 167, MCL
11 205.54a, in regard to the tilling, planting, draining, caring for,
12 or harvesting of things of the soil is only applicable when these
13 activities are performed in a business enterprise that constitutes
14 an agricultural purpose.