

HOUSE BILL NO. 4364

March 14, 2019, Introduced by Reps. O'Malley, Love, Paquette, Kennedy, Webber, Wozniak, Garza, Tyrone Carter, Brenda Carter, Kuppa and Neeley and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4 (MCL 205.94), as amended by 2018 PA 679.

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.



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

(c) All of the following:

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

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

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

(A) 0 to 25, 2 units.

(B) 26 to 100, 7 units.

(C) 101 to 500, 20 units.

(D) 501 or more, 25 units.

(iv) Motor vehicles purchased for resale purposes by a new



1 vehicle dealer licensed under section 248(8)(a) of the Michigan
2 vehicle code, 1949 PA 300, MCL 257.248.

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

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

20 (f) Except as otherwise provided under subsection (3),
21 property sold to a person engaged in a business enterprise that
22 uses or consumes the property, directly or indirectly, for either
23 the tilling, planting, draining, caring for, maintaining, or
24 harvesting of things of the soil or the breeding, raising, or
25 caring for livestock, poultry, or horticultural products, including
26 the transfers of livestock, poultry, or horticultural products for
27 further growth.

28 (g) Property or services sold to the United States, an
29 unincorporated agency or instrumentality of the United States, an



1 incorporated agency or instrumentality of the United States wholly
2 owned by the United States or by a corporation wholly owned by the
3 United States, the American Red Cross and its chapters or branches,
4 this state, a department or institution of this state, or a
5 political subdivision of this state.

6 (h) Property or services sold to a school, hospital, or home
7 for the care and maintenance of children or aged ~~persons,~~
8 **individuals** operated by an entity of government, a regularly
9 organized church, religious organization, or fraternal
10 organization, a veterans' organization, or a corporation
11 incorporated under the laws of this state, if not operated for
12 profit, and if the income or benefit from the operation does not
13 inure, in whole or in part, to an individual or private
14 shareholder, directly or indirectly, and if the activities of the
15 entity or agency are carried on exclusively for the benefit of the
16 public at large and are not limited to the advantage, interests,
17 and benefits of its members or a restricted group. The tax levied
18 does not apply to property or services sold to a parent cooperative
19 preschool. As used in this subdivision, "parent cooperative
20 preschool" means a nonprofit, nondiscriminatory educational
21 institution, maintained as a community service and administered by
22 parents of children currently enrolled in the preschool that
23 provides an educational and developmental program for children
24 younger than compulsory school age, that provides an educational
25 program for parents, including active participation with children
26 in preschool activities, that is directed by qualified preschool
27 personnel, and that is licensed ~~pursuant to~~ **under** 1973 PA 116, MCL
28 722.111 to 722.128.

29 (i) Property or services sold to a regularly organized church

1 or house of religious worship except the following:

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

4 (ii) Sales of vehicles licensed for use on the public highways
5 other than a passenger van or bus with a manufacturer's rated
6 seating capacity of 10 or more that is used primarily for the
7 transportation of ~~persons~~**individuals** for religious purposes.

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

13 (k) Property purchased for use in this state ~~where~~**if** actual
14 personal possession is obtained outside this state, the purchase
15 price or actual value of which does not exceed \$10.00 during 1
16 calendar month.

17 (l) A newspaper or periodical classified under federal postal
18 laws and regulations effective September 1, 1985 as second-class
19 mail matter or as a controlled circulation publication or qualified
20 to accept legal notices for publication in this state, as defined
21 by law, or any other newspaper or periodical of general
22 circulation, established at least 2 years, and published at least
23 once a week, and a copyrighted motion picture film. Tangible
24 personal property used or consumed in producing a copyrighted
25 motion picture film, a newspaper published more than 14 times per
26 year, or a periodical published more than 14 times per year, and
27 not becoming a component part of that film, newspaper, or
28 periodical is subject to the tax. Tangible personal property used
29 or consumed in producing a newspaper published 14 times or less per

1 year or a periodical published 14 times or less per year and that
 2 portion or percentage of tangible personal property used or
 3 consumed in producing an advertising supplement that becomes a
 4 component part of a newspaper or periodical is exempt from the tax
 5 under this subdivision. For purposes of this subdivision, tangible
 6 personal property that becomes a component part of a newspaper or
 7 periodical and consequently not subject to tax ~~—~~includes an
 8 advertising supplement inserted into and circulated with a
 9 newspaper or periodical that is otherwise exempt from tax under
 10 this subdivision, if the advertising supplement is delivered
 11 directly to the newspaper or periodical by a person other than the
 12 advertiser, or the advertising supplement is printed by the
 13 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~~ **An individual** who is a resident of this state who
 22 purchases an automobile in another state while in the military
 23 service of the United States and who pays a sales tax in the state
 24 where the 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.

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



1 (q) Water ~~when~~**if** delivered through water mains, water sold in
2 bulk tanks in quantities of not less than 500 gallons, or the sale
3 of bottled water.

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

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

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

19 (u) The storage, use, or consumption of an aircraft by a
20 domestic air carrier for use solely in the transport of air cargo,
21 passengers, or a combination of air cargo and passengers, that has
22 a maximum certificated takeoff weight of at least 6,000 pounds. For
23 purposes of this subdivision, the term "domestic air carrier" is
24 limited to a person engaged primarily in the commercial transport
25 for hire of air cargo, passengers, or a combination of air cargo
26 and passengers as a business activity. The state treasurer shall
27 estimate on January 1 each year the revenue lost by this act from
28 the school aid fund and deposit that amount into the school aid
29 fund from the general fund.



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

(w) Property or services sold to an organization not operated for profit and exempt from federal income tax under section 501(c)(3) or ~~501(e)(4)~~ **(4)** of the internal revenue code **of 1986**, 26 USC ~~501~~, **501(c)(3) or (4)**; or to a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued before June 13, 1994 an exemption ruling letter to purchase items exempt from tax signed by the administrator of the sales, use, and withholding taxes division of the department. The department shall reissue an exemption letter after June 13, 1994 to each of those organizations that had an exemption letter that ~~shall remain~~ **remains** in effect unless the organization fails to meet the requirements that originally entitled it to this exemption. The exemption does not apply to sales of tangible personal property and sales of vehicles licensed for use on public highways, that are not used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt organization.

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

(y) The purchase, lease, use, or consumption of the following by an industrial laundry:



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

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

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

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

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

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

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

(z) Property purchased or manufactured by a person engaged in the business of constructing, altering, repairing, or improving real estate for others, to the extent that the property is affixed to and made a structural part of real estate located in another state, regardless of whether sales or use tax was due and paid in the state in which the property is affixed to real estate.

(aa) The sale of a dental prosthesis.

(bb) Except as otherwise provided under subsection (3), a sale of any of the following to a person engaged in a business enterprise that uses or consumes the following for purposes as described in subdivision (f):



1 (i) Machinery that is capable of simultaneously harvesting
2 grain or other crops and biomass and machinery used for the purpose
3 of harvesting biomass.

4 (ii) Agricultural land tile and subsurface irrigation pipe.

5 (iii) Portable grain bins, including tangible personal property
6 affixed or to be affixed to portable grain bins and directly used
7 in the operation of a portable grain bin.

8 (iv) Grain drying equipment and the fuel or energy source that
9 powers that equipment, including tangible personal property affixed
10 or to be affixed to that equipment and directly used in the
11 operation of grain drying equipment.

12 (v) Tangible personal property purchased and installed as a
13 component part of a structure such as a barn or shop, including,
14 but not limited to, a water supply system, heating and cooling
15 system, lighting system, milking system, or any other appurtenance
16 used for purposes described in this subdivision or subdivision (f),
17 including the maintenance or improvement of existing structures, to
18 the extent that it is not permanently affixed to and does not
19 become a structural part of real estate. For purposes of this
20 subparagraph and subsection (3), property installed as a component
21 part of a structure as provided in this subparagraph is not
22 permanently affixed to or a structural part of real estate if it is
23 assembled and installed in a manner that it can be disassembled
24 without affecting the physical structural functionality of the
25 original structure and reassembled and reused for any of the
26 purposes described in this subdivision or subdivision (f).

27 (vi) Greenhouses, including tangible personal property affixed
28 to or to be affixed to greenhouses and directly used in the
29 operation of a greenhouse. For purposes of subsection (3), a



1 greenhouse is not permanently affixed to or a structural part of
2 real estate if it is assembled and installed in a manner that it
3 can be disassembled and reassembled without affecting the
4 functionality of the greenhouse upon being reassembled.

5 (cc) The sale of agricultural land tile, subsurface irrigation
6 pipe, portable grain bins, greenhouses, and grain drying equipment
7 to a person in the business of constructing, altering, repairing,
8 or improving real estate for others to the extent that it is
9 affixed to and made a structural part of real estate for others and
10 is used for an exempt purpose described under subdivision (f) or
11 (bb).

12 (dd) The sale of tangible personal property used in the direct
13 gathering of fish, by net, line, or otherwise, by an owner-operator
14 of a business enterprise, not including a charter fishing business
15 enterprise.

16 (ee) A sale of tangible personal property that is specifically
17 designed for, and directly used in, the harvesting of aquatic
18 vegetation from the waters of the state, including parts and
19 materials used for repairs of that tangible personal property, to a
20 person engaged in a business enterprise of harvesting aquatic
21 vegetation and ultimately used for purposes described in
22 subdivision (f) or (bb). This exemption does not include a motor
23 vehicle licensed or required to be licensed for use on the public
24 roads or highways of this state or tangible personal property
25 permanently affixed to and becoming a structural part of real
26 estate.

27 (ff) The purchase or lease of a school bus or transportation-
28 related services, and parts or adaptive equipment affixed or to be
29 affixed to a school bus ~~which~~**that** are used in the repair,



1 maintenance, accommodation, or modification of a school bus, if the
 2 school bus or services are primarily used in the performance of a
 3 contract entered into with an authorized representative of a school
 4 for the transportation of preprimary, primary, or secondary school
 5 pupils to or from a school or school-related events authorized by
 6 the administration of the school. However, if the school bus is
 7 used to provide transportation-related services other than to or
 8 from a school or school-related event authorized by the
 9 administration of the school to a nonexempt entity, then the amount
 10 paid for those services by the nonexempt entity is not exempt under
 11 this subdivision. As used in this subdivision:

12 (i) "Lease" means any transfer of possession or control for a
 13 fixed or indeterminate term for consideration and may include
 14 future options to purchase or extend.

15 (ii) "School" means a public school or public school academy as
 16 defined in section 5 of the revised school code, 1976 PA 451, MCL
 17 380.5.

18 (iii) "School bus" means that term as defined in section 7 of
 19 the pupil transportation act, 1990 PA 187, MCL 257.1807.

20 (gg) **The purchase or lease of a textbook by a full- or part-**
 21 **time college student for his or her courses, if, at the time of**
 22 **purchase, the student presents a valid student identification card**
 23 **and the textbook is required for a course being taken by that**
 24 **student at an institution of higher education. As used in this**
 25 **subdivision:**

26 (i) "Institution of higher education" means a degree- or
 27 certificate-granting public or private college or university,
 28 junior college, or community college in this state.

29 (ii) "Lease" means any transfer of possession or control for a



1 fixed or indeterminate term for consideration and may include
 2 future options to purchase or extend.

3 (iii) "Textbook" means any book or other written material that
 4 an institution of higher education requires for 1 of its courses.

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

10 (3) The exemptions under subsection (1)(f), (bb), (cc), and
 11 (dd) do not include the transfers of food, fuel, clothing, or any
 12 similar tangible personal property for personal living or human
 13 consumption or tangible personal property permanently affixed to
 14 and becoming a structural part of real estate unless it is
 15 agricultural land tile, subsurface irrigation pipe, a portable
 16 grain bin, or grain drying equipment.

17 (4) ~~Subsections~~ **Subsection** (1)(f), (bb), and (cc) as amended
 18 by 2018 PA 114 ~~are~~ **is** intended to be retroactive and to apply to
 19 all periods open under section 27a of 1941 PA 122, MCL 205.27a, but
 20 ~~do~~ **does** not apply to any refund claims filed ~~prior to~~ **before** April
 21 9, 2018.

22 (5) As used in this section:

23 (a) "Agricultural land tile" means fired clay or perforated
 24 plastic tubing used as part of a subsurface drainage system for
 25 land.

26 (b) "Algae" means any of the group of nonvascular aquatic
 27 plants ~~which~~ **that** do not have stems, flowers, leaves, and roots,
 28 and ~~which~~ **that** are single-celled, colonial, or filamentous forms.

29 (c) "Aquatic vegetation" means both algae and higher aquatic



1 plants.

2 (d) "Biomass" means crop residue used to produce energy or
3 agricultural crops grown specifically for the production of energy.

4 (e) "Greenhouse" means a structure covered with transparent or
5 translucent materials for the purpose of admitting natural light
6 and controlling the atmosphere for growing horticultural products.
7 Greenhouse does not include a structure primarily used to grow
8 marihuana.

9 (f) "Higher aquatic plant" means any of the group of
10 vascularized plants ~~which~~**that** have true stems, flowers, leaves,
11 and roots, ~~which~~**that** live in water, and ~~which~~**that** belong to the
12 class Angiospermae.

13 (g) "Portable grain bin" means a structure that is used or is
14 to be used to shelter grain and that is designed to be disassembled
15 without significant damage to its component parts.

16 (h) "Waters of the state" means that term as defined in
17 section 3302 of the natural resources and environmental protection
18 act, 1994 PA 451, MCL 324.3302.

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.

