HOUSE BILL NO. 5081

June 22, 2021, Introduced by Reps. Coleman, Outman and Hall and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled

"Use tax act,"

by amending sections 2 and 21 (MCL 205.92 and 205.111), section 2 as amended by 2018 PA 1 and section 21 as amended by 2020 PA 30.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2. As used in this act:

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

(b) "Use" means the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given. Converting tangible personal property acquired for a use exempt from the tax levied under this act to a use not exempt from the tax levied under this act is a taxable use.

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

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

(e) "Purchase" means to acquire for a consideration, whether the acquisition is effected by a transfer of title, of possession, or of both, or a license to use or consume; whether the transfer is absolute or conditional, and by whatever means the transfer is effected; and whether consideration is a price or rental in money, or by way of exchange or barter. Purchase includes converting tangible personal property acquired for a use exempt from the tax levied under this act to a use not exempt from the tax levied under this act.

(f) "Purchase price" or "price" means the total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to use tax. Purchase price includes the following subparagraphs (*i*) ~~through~~ **to** (*vii*) and excludes subparagraphs (*viii*) ~~through (*xiv*):~~ **to (*xv*):**

(*i*) Seller's cost of the property sold.

(*ii*) Cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller other than taxes imposed by this act, and any other expense of the seller.

(*iii*) Charges by the seller for any services necessary to complete the sale, other than the following:

(A) An amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.

(B) Labor or service charges involved in maintenance and repair work on tangible personal property of others if separately itemized.

(*iv*) ~~Delivery~~ **Except as otherwise provided in subparagraph (*xv*), delivery** charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property subject to the tax levied under this act from the seller to the purchaser.

(*v*) ~~Installation~~ **Except as otherwise provided in subparagraph (*xv*), installation** charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.

(*vi*) Except as otherwise provided in subparagraphs (*xi*), (*xii*), and (*xiv*), credit for any trade-in.

(*vii*) Except as otherwise provided in subparagraph (*x*), consideration received by the seller from third parties if all of the following conditions are met:

(A) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale.

(B) The seller has an obligation to pass the price reduction or discount through to the purchaser.

(C) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser.

(D) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented.

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in a group or organization.

(III) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(*viii*) Interest, financing, or carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*ix*) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*x*) Beginning January 1, 2000, employee discounts that are reimbursed by a third party on sales of motor vehicles.

(*xi*) Beginning November 15, 2013, credit for the agreed-upon value of a titled watercraft used as part payment of the purchase price of a new titled watercraft or used titled watercraft purchased from a watercraft dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(*xii*) Beginning December 15, 2013, credit for the agreed-upon value of a motor vehicle or recreational vehicle used as part payment of the purchase price of a new motor vehicle or used motor vehicle or recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals. Except as otherwise provided under subparagraph (*xiv*), for purposes of this subparagraph, the agreed-upon value of a motor vehicle or recreational vehicle used as part payment ~~shall be~~ **is** limited as follows:

(A) Beginning December 15, 2013, subject to sub-subparagraphs (B) and (C), the lesser of the following:

(I) $2,000.00.

(II) The agreed-upon value of the motor vehicle or recreational vehicle used as part payment.

(B) Beginning January 1, 2015 and each January 1 thereafter through December 31, 2018, the amount under sub-subparagraph (A)(I) ~~shall be~~ **is** increased by an additional $500.00 each year.

(C) Beginning January 1, 2019, subject to sub-subparagraphs (D) and (E), the lesser of the following:

(I) $5,000.00.

(II) The agreed-upon value of the motor vehicle used as part payment.

(D) Beginning January 1, 2020 and each January 1 thereafter, the amount under sub-subparagraph (C)(I) ~~shall be~~ **is** increased by an additional $1,000.00 each year.

(E) Beginning on January 1, in the year in which the amount under sub-subparagraph (C)(I) exceeds $14,000.00 and each January 1 thereafter, there ~~shall be~~ **is** no limitation on the agreed-upon value of the motor vehicle used as part payment.

(*xiii*) Beginning January 1, 2017, credit for the core charge attributable to a recycling fee, deposit, or disposal fee for a motor vehicle or recreational vehicle part or battery if the recycling fee, deposit, or disposal fee is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*xiv*) Beginning January 1, 2018, credit for the agreed-upon value of a recreational vehicle used as part payment of the purchase price of a recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(*xv*) Delivery or installation charges if the charges are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(g) "Consumer" means the person who has purchased tangible personal property or services for storage, use, or other consumption in this state and includes, but is not limited to, 1 or more of the following:

(*i*) A person acquiring tangible personal property if engaged in the business of constructing, altering, repairing, or improving the real estate of others.

(*ii*) A person who has converted tangible personal property or services acquired for storage, use, or consumption in this state that is exempt from the tax levied under this act to storage, use, or consumption in this state that is not exempt from the tax levied under this act.

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

(i) "Department" means the department of treasury.

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

(k) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software.

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

(m) "Interstate motor carrier" means a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and at least 1 other state or Canadian province.

(n) "Qualified commercial motor vehicle" means that term as defined in section 1(*l*), (m), and (n) of the motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

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

(p) "Sale" means a transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in this state.

(q) "Convert" means putting a service or tangible personal property acquired for a use exempt from the tax levied under this act at the time of acquisition to a use that is not exempt from the tax levied under this act, whether the use is in whole or in part, or permanent or not permanent. A motor vehicle purchased for resale by a new vehicle dealer licensed under section 248(8)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.248, and not titled in the name of the dealer ~~shall~~ **is** not ~~be~~ considered to be converted ~~prior to~~ **before** sale or lease by that dealer.

(r) "New motor vehicle" means that term as defined in section 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

(s) "Recreational vehicle" means that term as defined in section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

(t) "Dealer" means that term as defined in section 11 of the Michigan vehicle code, 1949 PA 300, MCL 257.11.

(u) "Watercraft dealer" means a dealer as that term is defined in section 80102 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80102.

Sec. 21. (1) Except as **otherwise** provided in ~~subsections (2), (3), (4), and (5),~~ **this section**, all money received and collected under this act must be deposited by the department of treasury in the state treasury to the credit of the general fund, to be disbursed only by appropriations by the legislature.

(2) The collections from the use tax imposed at the additional rate of 2% approved by the electors on March 15, 1994 must be deposited in the state school aid fund. ~~established in section 11 of article IX of the state constitution of 1963.~~

(3) ~~From~~ **In addition to the money deposited in the state school aid fund under subsection (2), from** the money received and collected under this act for the state share, an amount equal to ~~all~~ **the sum of the following, as determined by the department, must be deposited in the state school aid fund:**

(a) All revenue lost under the state education tax act, 1993

PA 331, MCL 211.901 to 211.906, ~~all~~ **as a result of the exemption of personal property under sections 9m, 9n, and 9o of the general property tax act, 1893 PA 206, MCL 211.9m, 211.9n, and 211.9o.**

(b) All revenue lost from basic school operating mills as a result of the exemption of personal property under sections 9m, 9n, and 9o of the general property tax act, 1893 PA 206, MCL 211.9m, 211.9n, and 211.9o. ~~, and all~~

(c) All revenue lost to the **state** school aid fund as a result of the exemption under section 4cc. ~~, as determined by the department, must be deposited into the state school aid fund established by section 11 of article IX of the state constitution of 1963. Funds deposited into the state school aid fund under this subsection must not include the portion of the state share of the use tax imposed at the additional rate of 2% approved by the electors of this state on March 15, 1994 and dedicated for aid to schools under subsection (2).~~ A person that claims an exemption under section 4cc shall report the purchase price of the data center equipment as defined in section 4cc and any other information necessary to determine the amount of revenue lost to the **state** school aid fund as a result of the exemption under section 4cc annually on a form at the time and in a manner prescribed by the department. ~~The~~

(d) All revenue lost to the state school aid fund as a result of the exclusion under section 2(f)(*xv*). A person that excludes delivery or installation charges from the purchase price of tangible personal property under section 2(f)(*xv*) for purposes of calculating the tax due under this act shall report the amount of the delivery or installation charges and any other information necessary to determine the amount of revenue lost to the state

school aid fund as a result of the exclusion under section 2(f)(*xv*) annually on a form at the time and in a manner prescribed by the department.

(4) A report required under ~~this~~ subsection ~~shall~~ **(3) must** not include any remittance for tax and does not constitute a return or otherwise alleviate the person's obligations under section 6.

(5) ~~(4)~~ Money received and collected under this act for the local community stabilization share is not state funds, must not be credited to the state treasury, and must be transmitted to the authority for deposit in the treasury of the authority, to be disbursed by the authority only as authorized under the local community stabilization authority act, 2014 PA 86, MCL 123.1341 to 123.1362. The local community stabilization share is a local tax, not a state tax, and money received and collected for the local community stabilization share is money of the authority and not money of this state.

(6) ~~(5)~~ Beginning October 1, 2016 and the first day of each calendar quarter thereafter, from the money received and collected under this act for the state share, an amount equal to the collections for the calendar quarter that is 2 calendar quarters immediately preceding the current calendar quarter of the tax imposed under this act at the additional rate of 2% approved by the electors on March 15, 1994 from the use, storage, or consumption of aviation fuel must be distributed as follows:

(a) An amount equal to 35% of the collections of the tax imposed at a rate of 2% on the use, storage, or consumption of aviation fuel must be deposited in the state aeronautics fund and must be expended, on appropriation, only for those purposes authorized in the aeronautics code of the state of Michigan, 1945

PA 327, MCL 259.1 to 259.208.

(b) An amount equal to 65% of the collections of the tax imposed at a rate of 2% on the use, storage, or consumption of aviation fuel must be deposited in the qualified airport fund and must be expended, on appropriation, only for those purposes authorized under section 35 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.35.

(7) ~~(6)~~ The department shall, on an annual basis, reconcile the amounts distributed under subsection ~~(5)~~ **(6)** during each fiscal year with the amounts actually collected for a particular fiscal year and shall make any necessary adjustments, positive or negative, to the amounts to be distributed for the next successive calendar quarter that begins January 1. The state treasurer or his or her designee shall annually provide to the operator of each qualified airport a report of the reconciliation performed under this subsection. The reconciliation report is subject to the confidentiality restrictions and penalties provided in section 28(1)(f) of 1941 PA 122, MCL 205.28.

(8) ~~(7)~~ As used in this section:

(a) "Aviation fuel" means fuel as that term is defined in section 4 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.4.

(b) "Qualified airport" means that term as defined in section 109 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.109.

(c) "Qualified airport fund" means the qualified airport fund created in section 34(2) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

(d) "State aeronautics fund" means the state aeronautics fund created in section 34(1) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

(e) "State school aid fund" means the state school aid fund established in section 11 of article IX of the state constitution of 1963.

Enacting section 1. Section 2(f)(*xv*) of the use tax act, 1937 PA 94, MCL 205.92, is intended only to clarify the current status of the law in this state, is remedial in nature, and, therefore, applies to a civil action pending on the effective date of this amendatory act.