

HOUSE BILL NO. 5729

February 09, 2022, Introduced by Reps. Thanedar, Berman, Cambensy, Paquette and Whitsett and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2b (MCL 205.92b), as amended by 2020 PA 47.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2b. As used in this act:
- 2 (a) "Alcoholic beverage" means a beverage suitable for human
- 3 consumption that contains 1/2 of 1% or more of alcohol by volume.
- 4 (b) "Computer" means an electronic device that accepts
- 5 information in digital or similar form and manipulates it for a
- 6 result based on a sequence of instructions.
- 7 (c) "Computer software" means a set of coded instructions

1 designed to cause a computer or automatic data processing equipment
2 to perform a task.

3 (d) "Delivered electronically" means delivered from the seller
4 to the purchaser by means other than tangible storage media.

5 (e) "Delivery charges" means charges by the seller for
6 preparation and delivery to a location designated by the purchaser
7 of tangible personal property or services. Delivery charges
8 include, but are not limited to, transportation, shipping, postage,
9 handling, crating, and packing. Beginning September 1, 2004,
10 delivery charges do not include the charges for delivery of direct
11 mail if the charges are separately stated on an invoice or similar
12 billing document given to the purchaser. If a shipment includes
13 both exempt property and taxable property, the seller shall
14 allocate the delivery charge using 1 of the following methods:

15 (i) Multiply the delivery price by a fraction, the numerator of
16 which is the total sales prices of the taxable property and the
17 denominator of which is the total sales prices of all property in
18 the shipment.

19 (ii) Multiply the delivery price by a fraction, the numerator
20 of which is the total weight of the taxable property and the
21 denominator of which is the total weight of all property in the
22 shipment.

23 (f) "Dental prosthesis" means a bridge, crown, denture, or
24 other similar artificial device used to repair or replace intraoral
25 defects such as missing teeth, missing parts of teeth, and missing
26 soft or hard structures of the jaw or palate.

27 (g) "Dietary supplement" means any product, other than
28 tobacco, intended to supplement the diet that is all of the
29 following:

1 (i) Required to be labeled as a dietary supplement identifiable
2 by the ~~"supplement facts"~~ **"Supplement Facts"** box found on the label
3 as required by 21 CFR 101.36.

4 (ii) Contains 1 or more of the following dietary ingredients:

5 (A) A vitamin.

6 (B) A mineral.

7 (C) An herb or other botanical.

8 (D) An amino acid.

9 (E) A dietary substance for use by humans to supplement the
10 diet by increasing the total dietary intake.

11 (F) A concentrate, metabolite, constituent, extract, or
12 combination of any ingredient listed in sub-subparagraphs (A) to
13 (E).

14 (iii) Intended for ingestion in tablet, capsule, powder,
15 softgel, gelcap, or liquid form, or if not intended for ingestion
16 in 1 of those forms, is not represented as conventional food or for
17 use as a sole item of a meal or of the diet.

18 (h) "Direct mail" means printed material delivered or
19 distributed by United States mail or other delivery service to a
20 mass audience or to addresses on a mailing list provided by the
21 purchaser or at the direction of the purchaser if the cost of the
22 items is not billed directly to the recipients, including tangible
23 personal property supplied directly or indirectly by the purchaser
24 to the direct mail seller for inclusion in the package containing
25 the printed material but not including multiple items of printed
26 material delivered to a single address.

27 (i) "Drug" means a compound, substance, or preparation, or any
28 component of a compound, substance, or preparation, other than food
29 or food ingredients, dietary supplements, or alcoholic beverages,

1 intended for human use that is 1 or more of the following:

2 (i) Recognized in the official United States Pharmacopoeia,
3 official homeopathic pharmacopoeia of the United States, or
4 official national formulary, or in any of their supplements.

5 (ii) Intended for use in the diagnosis, cure, mitigation,
6 treatment, or prevention of disease.

7 (iii) Intended to affect the structure or any function of the
8 body.

9 (j) "Durable medical equipment" means equipment for home use,
10 other than mobility enhancing equipment, dispensed pursuant to a
11 prescription, including durable medical equipment repair or
12 replacement parts, that does all of the following:

13 (i) Can withstand repeated use.

14 (ii) Is primarily and customarily used to serve a medical
15 purpose.

16 (iii) Is not useful generally to a person in the absence of
17 illness or injury.

18 (iv) Is not worn in or on the body.

19 (k) "Durable medical equipment repair or replacement parts"
20 includes all components or attachments used in conjunction with
21 durable medical equipment.

22 (l) "Electronic" means relating to technology having
23 electrical, digital, magnetic, wireless, optical, electromagnetic,
24 or similar capabilities.

25 (m) "Lease or rental" means any transfer of possession or
26 control of tangible personal property for a fixed or indeterminate
27 term for consideration and may include future options to purchase
28 or extend. This definition applies only to leases and rentals
29 entered into after September 1, 2004 and has no retroactive impact

1 on leases and rentals that existed on that date. Lease or rental
2 does not include the following subparagraphs (i) to (iii) and
3 includes subparagraph (iv):

4 (i) A transfer of possession or control of tangible personal
5 property under a security agreement or deferred payment plan that
6 requires the transfer of title upon completion of the required
7 payments.

8 (ii) A transfer of possession or control of tangible personal
9 property under an agreement requiring transfer of title upon
10 completion of the required payments and payment of an option price
11 that does not exceed \$100.00 or 1% of the total required payments,
12 whichever is greater.

13 (iii) The provision of tangible personal property along with an
14 operator for a fixed or indeterminate period of time, if that
15 operator is necessary for the equipment to perform as designed. To
16 be necessary, an operator must do more than maintain, inspect, or
17 set up the tangible personal property.

18 (iv) An agreement covering motor vehicles or trailers if the
19 amount of consideration may be increased or decreased by reference
20 to the amount realized upon sale or disposition of the property as
21 defined in section 7701(h)(1) of the internal revenue code of 1986,
22 26 USC ~~7701(h)(1)~~.**7701.**

23 (n) "Mobility enhancing equipment" means equipment, other than
24 durable medical equipment or a motor vehicle or equipment on a
25 motor vehicle normally provided by a motor vehicle manufacturer,
26 dispensed pursuant to a prescription, including repair or
27 replacement parts for that equipment, that is all of the following:

28 (i) Primarily and customarily used to provide or increase the
29 ability to move from 1 place to another and is appropriate for use

1 at home or on a motor vehicle.

2 (ii) Not generally used by a person with normal mobility.

3 (o) "Prescription" means an order, formula, or recipe, issued
4 in any form of oral, written, electronic, or other means of
5 transmission by a licensed physician or other health professional
6 as defined in section 3501 of the insurance code of 1956, 1956 PA
7 218, MCL 500.3501. For a hearing aid, prescription includes an
8 order, instruction, or direction of a hearing aid dealer or
9 salesperson licensed under article 13 of the occupational code,
10 1980 PA 299, MCL 339.1301 to 339.1309.

11 (p) "Prewritten computer software" means computer software,
12 including prewritten upgrades, that is delivered by any means and
13 that is not designed and developed by the author or other creator
14 to the specifications of a specific purchaser. Prewritten computer
15 software includes all of the following:

16 (i) Any combination of 2 or more prewritten computer software
17 programs or portions of prewritten computer software programs.

18 (ii) Computer software designed and developed by the author or
19 other creator to the specifications of a specific purchaser if it
20 is sold to a person other than that specific purchaser.

21 (iii) The modification or enhancement of prewritten computer
22 software or portions of prewritten computer software if the
23 modification or enhancement is designed and developed to the
24 specifications of a specific purchaser unless there is a
25 reasonable, separately stated charge or an invoice or other
26 statement of the price is given to the purchaser for the
27 modification or enhancement. If a person other than the original
28 author or creator modifies or enhances prewritten computer
29 software, that person is considered to be the author or creator of

1 only that person's modifications or enhancements.

2 (q) "Prosthetic device" means, except as provided in section
3 4ff, a replacement, corrective, or supportive device, other than
4 ~~contact lenses and dental prosthesis~~, dispensed pursuant to a
5 prescription, including repair or replacement parts for that
6 device, worn on or in the body to do 1 or more of the following:

7 (i) Artificially replace a missing portion of the body.

8 (ii) Prevent or correct a physical deformity or malfunction of
9 the body.

10 (iii) Support a weak or deformed portion of the body.

11 (r) "Tobacco" means cigarettes, cigars, chewing or pipe
12 tobacco, or any other item that contains tobacco.

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