

SENATE BILL NO. 776

March 12, 2024, Introduced by Senators LINDSEY, BUMSTEAD, DALEY, RUNESTAD, VICTORY, MCBROOM, DAMOOSE, HUIZENGA, NESBITT, LAUWERS, BELLINO, WEBBER, HAUCK, OUTMAN, JOHNSON and ALBERT and referred to the Committee on Finance, Insurance, and Consumer Protection.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2 (MCL 205.92), as amended by 2023 PA 94.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) As used in this act:
2 (a) "Person" means an individual, firm, partnership, joint
3 venture, association, social club, fraternal organization,
4 municipal or private corporation whether or not organized for
5 profit, company, limited liability company, estate, trust,
6 receiver, trustee, syndicate, the United States, this state,
7 county, or any other group or combination acting as a unit, and

1 **includes** the plural as well as the singular number, unless the
2 intention to give a more limited meaning is disclosed by the
3 context.

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

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

13 (d) "Seller" means the person from whom a purchase is made and
14 includes every person selling tangible personal property or
15 services for storage, use, or other consumption in this state. If,
16 in the opinion of the department, it is necessary for the efficient
17 administration of this act to regard a salesperson, representative,
18 peddler, or canvasser as the agent of a dealer, distributor,
19 supervisor, or employer under whom the person operates or from whom
20 the person obtains tangible personal property or services sold by
21 the person for storage, use, or other consumption in this state,
22 irrespective of whether or not the person is making the sales on
23 the person's own behalf or on behalf of the dealer, distributor,
24 supervisor, or employer, the department may so consider the person,
25 and may consider the dealer, distributor, supervisor, or employer
26 as the seller for the purpose of this act.

27 (e) "Purchase" means to acquire for a consideration, whether
28 the acquisition is effected by a transfer of title, of possession,
29 or of both, or a license to use or consume; whether the transfer is

1 absolute or conditional, and by whatever means the transfer is
2 effected; and whether consideration is a price or rental in money,
3 or by way of exchange or barter. Purchase includes converting
4 tangible personal property acquired for a use exempt from the tax
5 levied under this act to a use not exempt from the tax levied under
6 this act.

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

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

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

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

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

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

29 (iv) Except as otherwise provided in subparagraph ~~(xv)~~ **(xiv)** ,

1 delivery charges. A seller is not liable under this act for
2 delivery charges allocated to the delivery of exempt property.

3 (v) Except as otherwise provided in subparagraph ~~(xv)~~, ~~(xiv)~~,
4 installation charges.

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

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

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

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

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

18 (D) One of the following criteria is met:

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

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

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

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

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

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

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

21 (xii) Beginning ~~December 15, 2013,~~ **on the effective date of the**
22 **amendatory act that deleted former sub-subparagraphs (A) to (E),**
23 credit for the agreed-upon value of a motor vehicle or recreational
24 vehicle used as part payment of the purchase price of a new motor
25 vehicle or used motor vehicle or recreational vehicle purchased
26 from a dealer if the agreed-upon value is separately stated on the
27 invoice, bill of sale, or similar document given to the purchaser.
28 This subparagraph does not apply to leases or rentals. ~~Except as~~
29 ~~otherwise provided under subparagraph (xiv), for purposes of this~~

1 ~~subparagraph, the agreed-upon value of a motor vehicle or~~
 2 ~~recreational vehicle used as part payment is limited as follows:~~

3 ~~(A) Beginning December 15, 2013, subject to sub-subparagraphs~~

4 ~~(B) and (C), the lesser of the following:~~

5 ~~(I) \$2,000.00.~~

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

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

11 ~~(C) Beginning January 1, 2019, subject to sub-subparagraphs~~

12 ~~(D) and (E), the lesser of the following:~~

13 ~~(I) \$5,000.00.~~

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

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

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

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

28 ~~(xiv) Beginning January 1, 2018, credit for the agreed-upon~~
 29 ~~value of a recreational vehicle used as part payment of the~~

1 ~~purchase price of a recreational vehicle purchased from a dealer if~~
2 ~~the agreed-upon value is separately stated on the invoice, bill of~~
3 ~~sale, or similar document given to the purchaser. This subparagraph~~
4 ~~does not apply to leases or rentals.~~

5 **(xiv)** ~~(xv)~~ Delivery or installation charges if such charges are
6 separately stated on the invoice, bill of sale, or similar document
7 provided to the purchaser, and the taxpayer maintains its books and
8 records to show separately the transactions used to determine the
9 tax levied by this act. This subdivision does not apply to delivery
10 or installation charges involving or relating to the sale of
11 electricity, natural gas, or artificial gas by a utility.

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

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

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

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

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

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

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

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

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

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

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

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

24 (q) "Convert" means putting a service or tangible personal
25 property acquired for a use exempt from the tax levied under this
26 act at the time of acquisition to a use that is not exempt from the
27 tax levied under this act, whether the use is in whole or in part,
28 or permanent or not permanent. A motor vehicle purchased for resale
29 by a new vehicle dealer licensed under section 248(8)(a) of the

1 Michigan vehicle code, 1949 PA 300, MCL 257.248, and not registered
2 in the name of the dealer is not considered to be converted before
3 sale or lease by that dealer.

4 (r) "New motor vehicle" means that term as defined in section
5 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

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

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

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

13 (v) "Utility" means either of the following:

14 (i) A person regulated by the Michigan public service
15 commission as a utility.

16 (ii) A person that operates equipment or facilities for
17 producing, generating, transmitting, delivering, or furnishing
18 electricity within this state for the public for compensation,
19 regardless of the person's owner, ownership structure, or
20 regulation by the Michigan public service commission.

21 (2) Notwithstanding anything to the contrary in this act, the
22 following applies only to delivery and installation charges
23 described in subsection (1)(f)(iv) or (v), except that this
24 subsection does not apply to delivery and installation charges
25 involving or relating to the sale of electricity, natural gas, or
26 artificial gas by a utility:

27 (a) Not later than July 25, 2023, the department shall cancel
28 all outstanding balances related to such delivery and installation
29 charges on notices of intent to assess that were issued under

1 section 21 of 1941 PA 122, MCL 205.21, for the tax levied under
2 this act and that were issued before April 26, 2023.

3 (b) Not later than July 25, 2023, the department shall cancel
4 all outstanding balances related to such delivery and installation
5 charges on final assessments that were issued under section 22 of
6 1941 PA 122, MCL 205.22, for the tax levied under this act, and
7 that were issued before April 26, 2023.

8 (c) Beginning April 26, 2023, the department shall not issue
9 any new assessments for the tax levied under this act on such
10 delivery and installation charges for any tax period before April
11 26, 2023, that is open under the statute of limitations provided in
12 section 27a of 1941 PA 122, MCL 205.27a.

13 Enacting section 1. This amendatory act does not take effect
14 unless Senate Bill No. 777 of the 102nd Legislature is enacted into
15 law.