

USE TAX ACT (EXCERPT)
Act 94 of 1937

***** 205.92.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017 *****

205.92.amended Definitions.

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 obtains tangible personal property or services sold by him or her for storage, use, or other consumption in this state, irrespective of whether or not he or she is making the sales on his or her own behalf or on behalf of the dealer, distributor, supervisor, or employer, the department may so consider him or her, 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 (vii) and excludes subparagraphs (viii) through (xiii):

(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 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 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) and (xii), 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. For purposes of this subparagraph, the agreed-upon value of a motor vehicle or recreational vehicle used as part payment shall be 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, the amount under sub-subparagraph (A)(I) shall be increased by an additional \$500.00 each year.

(C) Beginning on January 1, in the year in which the amount under sub-subparagraph (A)(I) exceeds \$14,000.00 and each January 1 thereafter, there shall be no limitation on the agreed-upon value of the motor vehicle or recreational 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.

(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 not be considered to be converted prior to 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.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.92;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1953, Act 203, Imd. Eff. June 10, 1953;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1969, Act 214, Imd. Eff. Aug. 6, 1969;—Am. 1981, Act 166, Imd. Eff. Dec. 2, 1981;—Am. 1982, Act 219, Eff. Jan. 1, 1984;—Am. 1982, Act 479, Eff. Mar. 30, 1983;—Am. 1984, Act 178, Imd. Eff. July 3, 1984;—Am. 1987, Act 260, Imd. Eff. Dec. 28, 1987;—Am. 1988, Act 506, Imd. Eff. Dec. 29, 1988;—Am. 1995, Act 78, Imd. Eff. June 13, 1995;—Am. 1995, Act 208, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 366, Imd. Eff. Oct. 20, 1998;—Am. 2000, Act 391, Imd. Eff. Jan. 3, 2001;—Am. 2002, Act 511, Imd. Eff. July 23, 2002;—Am. 2002, Act 669, Eff. Mar. 31, 2003;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 103, Eff. Sept. 30, 2002;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2013, Act 234, Imd. Eff. Dec. 26, 2013;—Am. 2016, Act 7, Imd. Eff. Feb. 2, 2016;—Am. 2016, Act 516, Eff. Mar. 29, 2017.

Compiler's note: Enacting section 2 of Act 506 of 1988 provides:

"This amendatory act is effective for all taxes due beginning on April 1, 1983."

Enacting section 2 of Act 78 of 1995 provides:

"This amendatory act is effective for taxes levied after 1980."

Enacting sections 1 and 2 of 2007 PA 103 provide:

"Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 7 of 2016 provides:

"Enacting section 1. This amendatory act is retroactive and is effective December 15, 2013."