

SENATE BILL No. 996

September 22, 1988, Introduced by Senators SHINKLE, CARL, DE GROW,
NICHOLS, POSHTUMUS and CRUCE and referred to the Committee on
Finance.

A bill to amend section 2 of Act No. 94 of the Public Acts
of the second Extra Session of 1937, entitled as amended
"Use tax act,"
as amended by Act No. 260 of the Public Acts of 1987, being sec-
tion 205.92 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2 of Act No. 94 of the Public Acts of
2 the second Extra Session of 1937, as amended by Act No. 260 of
3 the Public Acts of 1987, being section 205.92 of the Michigan
4 Compiled Laws, is amended to read as follows:

5 Sec. 2. As used in this act:

6 (a) "Person" means an individual, firm, partnership, joint
7 venture, association, social club, fraternal organization,
8 municipal or private corporation whether or not organized for
9 profit, company, estate, trust, receiver, trustee, syndicate, the

1 United States, this state, county, or any other group or
2 combination acting as a unit, and the plural as well as the sin-
3 gular number, unless the intention to give a more limited meaning
4 is disclosed by the context.

5 (b) "Use" means the exercise of a right or power over tangi-
6 ble personal property incident to the ownership of that property
7 including transfer of the property in a transaction where posses-
8 sion is given.

9 (c) "Storage" means a keeping or retention in this state for
10 any purpose after losing its interstate character.

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

26 (e) "Purchase" means acquired for a consideration, whether
27 the acquisition was effected by a transfer of title, ~~or~~ of

1 possession, or of both, or a license to use or consume; whether
2 the transfer was absolute or conditional, and by whatever means
3 the transfer was effected; and whether consideration is a price
4 or rental in money, or by way of exchange or barter.

5 (f) "Price" means the aggregate value in money of anything
6 paid or delivered, or promised to be paid or delivered, by a con-
7 sumer to a seller in the consummation and complete performance of
8 the transaction by which tangible personal property or services
9 were purchased or rented for storage, use, or other consumption
10 in this state, without a deduction for the cost of the property
11 sold, cost of materials used, labor or service cost, interest or
12 discount paid, or any other expense. The price of tangible per-
13 sonal property for affixation to real estate to a manufacturer,
14 fabricator, or assembler of tangible personal property who quali-
15 fies as a construction contractor who affixes the tangible per-
16 sonal property to realty for others shall be equal to 25% OF the
17 TOTAL amount of consideration or purchase price ~~which any other~~
18 ~~person would have to pay if the other person acquired~~ PAID TO
19 THE CONSTRUCTION CONTRACTOR FOR the tangible personal property
20 ~~from the manufacturer, fabricator, or assembler for affixation~~
21 AFFIXED to real estate ~~-. However, beginning January 1, 1984 and~~
22 ~~until July 3, 1984, if a purchase is made of or a qualified pur-~~
23 ~~chase agreement is entered into for the purchase of a motor vehi-~~
24 ~~cle or trailer coach with an exchange of a used motor vehicle or~~
25 ~~a used trailer coach or if a purchase is made of or a qualified~~
26 ~~purchase agreement is entered into for the purchase of a titled~~
27 ~~watercraft with an exchange of a used titled watercraft, the~~

~~1 price shall be the difference between the agreed upon value of~~
~~2 the motor vehicle, trailer coach, or titled watercraft used as~~
~~3 part payment of the purchase price and the full retail price of~~
~~4 the motor vehicle, trailer coach, or titled watercraft being~~
~~5 purchased. A qualified purchase agreement means a purchase~~
~~6 agreement presented to the secretary of state at the time the~~
~~7 vehicle is registered in this state for a transfer of ownership~~
~~8 that shall occur on or before February 1, 1985. Beginning~~
~~9 July 3, 1984, the~~ MINUS ANY AMOUNT PAID FOR MATERIALS UPON WHICH
10 A SALES TAX WAS PAID BY THE CONSTRUCTION CONTRACTOR AT THE TIME
11 OF PURCHASE. HOWEVER, FOR A CONSTRUCTION CONTRACT ENTERED INTO
12 BEFORE JANUARY 1, 1989, THE PRICE SHALL BE THE INVENTORY COST OF
13 THE TANGIBLE PERSONAL PROPERTY. THE price OF A MOTOR VEHICLE,
14 TRAILER COACH, OR TITLED WATERCRAFT shall be the full retail
15 price of the motor vehicle, trailer coach, or titled watercraft
16 being purchased. The tax collected by the seller from the con-
17 sumer or lessee under this act shall not be considered as a part
18 of the price, but shall be considered as a tax collection for the
19 benefit of the state, and a person other than the state shall not
20 derive a benefit from the collection or payment of this tax. A
21 price does not include an assessment imposed pursuant to either
22 the convention and tourism marketing act, Act No. 383 of the
23 Public Acts of 1980, being sections 141.881 to 141.889 of the
24 Michigan Compiled Laws, or the community convention and tourism
25 marketing act, Act No. 395 of the Public Acts of 1980, being sec-
26 tions 141.871 to 141.880 of the Michigan Compiled Laws, which was
27 added to charges for rooms or lodging otherwise subject, pursuant

1 to section 3a, to tax under this act. Price does not include
2 specific charges for technical support or for adapting or modify-
3 ing prewritten, standard, or canned computer software programs to
4 a purchaser's needs or equipment if the charges are separately
5 stated and identified. Tax imposed pursuant to this act shall
6 not be computed or collected on rental receipts when the tangible
7 personal property rented or leased has previously been subjected
8 to a Michigan sales or use tax when purchased by the lessor.

9 (g) "Consumer" means the person who has purchased tangible
10 personal property or services for storage, use, or other consump-
11 tion in this state and includes a person acquiring tangible per-
12 sonal property when engaged in the business of constructing,
13 altering, repairing, or improving the real estate of others.

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

17 (i) "Department" means the revenue division of the depart-
18 ment of treasury.

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

21 (k) "Tangible personal property" includes computer software
22 offered for general use by the public or software modified or
23 adapted to the user's needs or equipment by the seller, only if
24 the software is available from a seller of software on an as is
25 basis or as an end product without modification or adaptation.
26 Tangible personal property does not include computer software
27 originally designed for the exclusive use and special needs of

1 the purchaser. As used in this subdivision, "computer software"
2 means a set of statements or instructions that when incorporated
3 in a machine usable medium is capable of causing a machine or
4 device having information processing capabilities to indicate,
5 perform, or achieve a particular function, task, or result.