

Act No. 214
Public Acts of 1994
Approved by the Governor
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Reps Profit Alley Shugars, Martin and Kaza

**Reps Barns Bender Bodem Bullard Byrum DeMars Dobb Gagliardi Gernaat Gnodtke Goschka
Gustafson Horton Jaye Kukuk Llewellyn McBryde Murphy Palamara Price Randall Voorhees
Weeks and Whyman named co sponsors**

ENROLLED HOUSE BILL No. 5451

AN ACT to amend section 4 of Act No 94 of the Public Acts of 1937 entitled as amended An act to provide for the levy assessment and collection of a specific excise tax on the storage use or consumption in this state of tangible personal property and certain services to appropriate the proceeds thereof and to prescribe penalties for violations of the provisions of this act as amended by Act No 34 of the Public Acts of 1994 being section 205 94 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Section 4 of Act No 94 of the Public Acts of 1937 as amended by Act No 34 of the Public Acts of 1994 being section 205 94 of the Michigan Compiled Laws is amended to read as follows

Sec 4 The tax levied does not apply to the following

(a) Property sold in this state on which transaction a tax is paid under the general sales tax act Act No 167 of the Public Acts of 1933 as amended being sections 205 51 to 205 78 of the Michigan Compiled Laws if the tax was due and paid on the retail sale to a consumer

(b) Property the storage use or other consumption of which this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state

(c) Property purchased for resale demonstration purposes or lending or leasing to a public or parochial school offering a course in automobile driving except that a vehicle purchased by the school shall be certified for driving education and shall not be reassigned for personal use by the school's administrative personnel For a dealer selling a new car or truck exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style according to the following schedule of 0 to 25 2 units 26 to 100 7 units 101 to 500 20 units 501 or more 25 units but not to exceed 25 cars and trucks in 1 calendar year for demonstration purposes For tax years beginning after December 31 1987 property purchased for resale includes promotional merchandise transferred pursuant to a redemption offer to a person located outside this state

(d) Property that is brought into this state by a nonresident person for storage use or consumption while temporarily within this state except if the property is used in this state in a nontransitory business activity for a period exceeding 15 days

(e) Property the sale or use of which was already subjected to a sales tax or use tax equal to or in excess of that imposed by this act under the law of any other state or a local governmental unit within a state if the tax was due and

paid on the retail sale to the consumer and the state or local governmental unit within a state in which the tax was imposed accords like or complete exemption on property the sale or use of which was subjected to the sales or use tax of this state. If the sale or use of property was already subjected to a tax under the law of any other state or local governmental unit within a state in an amount less than the tax imposed by this act, this act shall apply, but at a rate measured by the difference between the rate provided in this act and the rate by which the previous tax was computed.

(f) Property sold to a person engaged in a business enterprise and using and consuming the property in the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth. At the time of the transfer of that tangible personal property, the transferee shall sign a statement in a form approved by the department stating that the property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise. The statement shall be accepted by the courts as prima facie evidence of the exemption. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land used in the production of agricultural products as a business enterprise, and includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption does not include transfers of food, fuel, clothing, or similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed and becoming a structural part of real estate.

(g) Property sold to the following:

(i) An industrial processor for use or consumption in industrial processing. Property used or consumed in industrial processing does not include tangible personal property permanently affixed and becoming a structural part of real estate, office furniture, office supplies, and administrative office equipment, or vehicles licensed and titled for use on public highways other than a specially designed vehicle, together with parts, used to mix and agitate materials added at a plant or jobsite in the concrete manufacturing process. Industrial processing does not include receipt and storage of raw materials purchased or extracted by the user or consumer, or the preparation of food and beverages by a retailer for retail sale. As used in this subdivision, industrial processor means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail. Sales to a person performing a service who does not act as an industrial processor while performing the service may not be excluded under this subdivision, except as provided in subparagraph (ii).

(ii) A person, whether or not the person is an industrial processor, when the property is a computer used in operating industrial processing equipment, equipment used in a computer assisted manufacturing system, equipment used in a computer assisted design or engineering system integral to an industrial process, or a subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

(h) Property or services sold to the United States, an unincorporated agency or instrumentality of the United States, an incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American red cross and its chapters or branches, this state, a department or institution of this state, or a political subdivision of this state.

(i) Property or services sold to a school, hospital, home for the care and maintenance of children or aged persons, or other health, welfare, educational, cultural, arts, charitable, or benevolent institution or agency operated by an entity of government, a regularly organized church, religious or fraternal organization, a veterans organization, or a corporation incorporated under the laws of this state, if not operated for profit, and if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or a restricted group. The tax levied shall not apply to property or services sold to a parent cooperative preschool. As used in this subdivision, parent cooperative preschool means a nonprofit, nondiscriminatory educational institution maintained as a community service and administered by parents of children currently enrolled in the preschool that provides an educational and developmental program for children younger than compulsory school age that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel and that is licensed by the department of social services pursuant to Act No. 116 of the Public Acts of 1973, as amended, being sections 722.111 to 722.128 of the Michigan Compiled Laws.

(j) Property or services sold to a regularly organized church or house of religious worship, except:

(i) Sales in which the property is used in activities that are mainly commercial enterprises.

(ii) Sales of vehicles licensed for use on the public highways other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of persons for religious purposes.

(k) A vessel designed for commercial use of registered tonnage of 500 tons or more if produced upon special order of the purchaser and bunker and galley fuel provisions supplies maintenance and repairs for the exclusive use of a vessel of 500 tons or more engaged in interstate commerce

(l) Property purchased by a person engaged in the business of constructing altering repairing or improving real estate for others to the extent the property is affixed to and made a structural part of the real estate of a nonprofit hospital or a nonprofit housing entity qualified as exempt pursuant to section 15a of the state housing development authority act of 1966 Act No 346 of the Public Acts of 1966 as amended being section 125 1415a of the Michigan Compiled Laws A nonprofit hospital or nonprofit housing includes only the property of a nonprofit hospital or the homes or dwelling places constructed by a nonprofit housing entity the income or property of which does not directly or indirectly inure to the benefit of an individual private stockholder or other private person

(m) Property purchased for use in this state where actual personal possession is obtained outside this state the purchase price or actual value of which does not exceed \$10 00 during 1 calendar month

(n) A newspaper or periodical classified under federal postal laws and regulations effective September 1 1985 as second class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state as defined by law or any other newspaper or periodical of general circulation established at least 2 years and published at least once a week and a copyrighted motion picture film Tangible personal property used or consumed and not becoming a component part of a copyrighted motion picture film newspaper or periodical except that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is subject to tax For purposes of this subdivision tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser or the advertising supplement is printed by the newspaper or periodical

(o) Property purchased by persons licensed to operate a commercial radio or television station if the property is used in the origination or integration of the various sources of program material for commercial radio or television transmission This subdivision does not include a vehicle licensed and titled for use on public highways or property used in the transmitting to or receiving from an artificial satellite

(p) A person who is a resident of this state who purchases an automobile in another state while in the military service of the United States and who pays a sales tax in the state where the automobile is purchased

(q) A vehicle for which a special registration is secured in accordance with section 226(12) of the Michigan vehicle code Act No 300 of the Public Acts of 1949 as amended being section 257 226 of the Michigan Compiled Laws

(r) A hearing aid contact lenses if prescribed for a specific disease which precludes the use of eyeglasses or any other apparatus device or equipment used to replace or substitute for any part of the human body or used to assist the disabled person to lead a reasonably normal life when the tangible personal property is purchased on a written prescription or order issued by a health professional as defined by section 4 of former Act No 264 of the Public Acts of 1974 or section 21005 of the public health code Act No 368 of the Public Acts of 1978 being section 333 21005 of the Michigan Compiled Laws or eyeglasses prescribed or dispensed to correct the person's vision by an ophthalmologist optometrist or optician

(s) Water when delivered through water mains or in bulk tanks in quantities of not less than 500 gallons

(t) The purchase of machinery and equipment for use or consumption in the rendition of a service the use or consumption of which is taxable under section 3a(a) except that this exception is limited to the tangible personal property located on the premises of the subscriber and the necessary exchange equipment

(u) A vehicle not for resale used by a nonprofit corporation organized exclusively to provide a community with ambulance or fire department services

(v) Tangible personal property purchased and installed as a component part of a water pollution control facility for which a tax exemption certificate is issued pursuant to Act No 222 of the Public Acts of 1966 as amended being sections 323 351 to 323 358 of the Michigan Compiled Laws or an air pollution control facility for which a tax exemption certificate is issued pursuant to Act No 250 of the Public Acts of 1965 as amended being sections 336 1 to 336 8 of the Michigan Compiled Laws

(w) Tangible real or personal property donated by a manufacturer wholesaler or retailer to an organization or entity exempt pursuant to subdivision (i) or (j) or section 4a(a) or (b) of the general sales tax act Act No 167 of the Public Acts of 1933 as amended being section 205 54a of the Michigan Compiled Laws

(x) The storage use or consumption of any aircraft owned or used by a domestic air carrier operating under a certificate issued by the United States department of transportation pursuant to section 401 of title IV of the federal aviation act of 1958 Public Law 85 726 49 U S C Appx 1371 to 1376 and 1377 to 1389 if the aircraft is used solely in the transport of air cargo or in the commercial transport of passengers

Section 2 The exemption for air carriers provided for in this amendatory act is effective beginning January 1 1993