

HOUSE BILL No. 4119

February 2, 1999, Introduced by Reps. Vander Roest, Birkholz, Gosselin, Garcia, Mortimer, Bradstreet, Woronchak, Vear, Raczkowski and Cassis and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2 (MCL 205.92), as amended by 1998 PA 366,
and by adding sections 8 and 8a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Person" means an individual, firm, partnership, joint
3 venture, association, social club, fraternal organization, munic-
4 ipal or private corporation whether or not organized for profit,
5 company, estate, trust, receiver, trustee, syndicate, the United
6 States, this state, county, or any other group or combination
7 acting as a unit, and the plural as well as the singular number,
8 unless the intention to give a more limited meaning is disclosed
9 by the context.

1 (b) "Use" means the exercise of a right or power over
2 tangible personal property incident to the ownership of that
3 property including transfer of the property in a transaction
4 where possession is given.

5 (c) "Storage" means a keeping or retention of property in
6 this state for any purpose after the property loses its inter-
7 state character.

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

23 (e) "Purchase" means to acquire for a consideration, whether
24 the acquisition is effected by a transfer of title, of posses-
25 sion, or of both, or a license to use or consume; whether the
26 transfer is absolute or conditional, and by whatever means the

1 transfer is effected; and whether consideration is a price or
2 rental in money, or by way of exchange or barter.

3 (f) "Price" means the aggregate value in money of anything
4 paid or delivered, or promised to be paid or delivered, by a con-
5 sumer to a seller in the consummation and complete performance of
6 the transaction by which tangible personal property or services
7 are purchased or rented for storage, use, or other consumption in
8 this state, without a deduction for the cost of the property
9 sold, cost of materials used, labor or service cost, interest or
10 discount paid, or any other expense. The price of tangible per-
11 sonal property, for affixation to real estate, withdrawn by a
12 construction contractor from inventory available for sale to
13 others or made available by publication or price list as a fin-
14 ished product for sale to others is the finished goods inventory
15 value of the property. If a construction contractor manufac-
16 tures, fabricates, or assembles tangible personal property before
17 affixing it to real estate, the price of the property is equal to
18 the sum of the materials cost of the property and the cost of
19 labor to manufacture, fabricate, or assemble the property but
20 does not include the cost of labor to cut, bend, assemble, or
21 attach property at the site of affixation to real estate. For
22 the purposes of the preceding sentence, for property withdrawn by
23 a construction contractor from inventory available for sale to
24 others or made available by publication or price list as a fin-
25 ished product for sale to others, the materials cost of the prop-
26 erty means the finished goods inventory value of the property.
27 For purposes of this subdivision, "manufacture" means to convert

1 or condition tangible personal property by changing the form,
2 composition, quality, combination, or character of the property
3 and "fabricate" means to modify or prepare tangible personal
4 property for affixation or assembly. The price of a motor vehi-
5 cle, ~~trailer coach~~ AIRCRAFT, RECREATIONAL VEHICLE,
6 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, or titled
7 watercraft is the full retail price of the motor vehicle,
8 ~~trailer coach~~ AIRCRAFT, RECREATIONAL VEHICLE, SELF-PROPELLED
9 PIECE OF HEAVY MACHINERY OR EQUIPMENT, or titled watercraft being
10 purchased MINUS THE AGREED-UPON VALUE OF ANY MOTOR VEHICLE,
11 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, AIRCRAFT,
12 RECREATIONAL VEHICLE, OR TITLED WATERCRAFT USED AS PART PAYMENT
13 OF THE PURCHASE PRICE. The tax collected by the seller from the
14 consumer or lessee under this act is not considered part of the
15 price, but is a tax collection for the benefit of the state, and
16 a person other than the state shall not derive a benefit from the
17 collection or payment of this tax. A price does not include an
18 assessment imposed under the convention and tourism marketing
19 act, 1980 PA 383, MCL 141.881 to 141.889, 1974 PA 263, MCL
20 141.861 to 141.867, the state convention facility development
21 act, 1985 PA 106, MCL 207.621 to 207.640, the regional tourism
22 marketing act, 1989 PA 244, MCL 141.891 to 141.900, 1991 PA 180,
23 MCL 207.751 to 207.759, or the community convention or tourism
24 marketing act, 1980 PA 395, MCL 141.871 to 141.880, that was
25 added to charges for rooms or lodging otherwise subject, pursuant
26 to section 3a, to tax under this act. Price does not include
27 specific charges for technical support or for adapting or

01174'99

1 modifying prewritten, standard, or canned computer software
2 programs to a purchaser's needs or equipment if the charges are
3 separately stated and identified. The tax imposed under this act
4 shall not be computed or collected on rental receipts if the tan-
5 gible personal property rented or leased has previously been sub-
6 jected to a Michigan sales or use tax when purchased by the
7 lessor.

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

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

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

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

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

1 means a set of statements or instructions that when incorporated
2 in a machine usable medium is capable of causing a machine or
3 device having information processing capabilities to indicate,
4 perform, or achieve a particular function, task, or result.

5 (l) "Tangible personal property" does not include a commer-
6 cial advertising element if the commercial advertising element is
7 used to create or develop a print, radio, television, or other
8 advertisement, the commercial advertising element is discarded or
9 returned to the provider after the advertising message is com-
10 pleted, and the commercial advertising element is custom devel-
11 oped by the provider for the purchaser. As used in this subdivi-
12 sion, "commercial advertising element" means a negative or posi-
13 tive photographic image, an audiotape or videotape master, a
14 layout, a manuscript, writing of copy, a design, artwork, an
15 illustration, retouching, and mechanical or keyline
16 instructions. "Tangible personal property" includes black and
17 white or full color process separation elements, an audiotape
18 reproduction, or a videotape reproduction.

19 (m) "Textiles" means goods that are made of or incorporate
20 woven or nonwoven fabric, including, but not limited to, cloth-
21 ing, shoes, hats, gloves, handkerchiefs, curtains, towels,
22 sheets, pillows, pillowcases, tablecloths, napkins, aprons,
23 linens, floor mops, floor mats, and thread. Textiles also
24 include materials used to repair or construct textiles, or other
25 goods used in the rental, sale, or cleaning of textiles.

26 (N) "RECREATIONAL VEHICLE" INCLUDES A TRAILER COACH,
27 CONVENTIONAL TRAVEL TRAILER, PARK TRAILER, FIFTH-WHEEL TRAVEL

1 TRAILER, FOLDING CAMPING TRAILER, TRUCK CAMPER, MOTOR HOME, VAN
2 CAMPER, VAN CONVERSION, OR MULTIUSE VEHICLE.

3 SEC. 8. (1) UPON PURCHASE OF A MOTOR VEHICLE, AIRCRAFT,
4 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
5 TIONAL VEHICLE, OR TITLED WATERCRAFT BY A NEW DEALER OR A USED OR
6 SECONDHAND DEALER THAT IS NOT PART OF A TRANSACTION IN WHICH THE
7 DEALER ALSO SELLS A MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE
8 OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
9 WATERCRAFT AND PROVIDES THE STATEMENT SPECIFYING THE AMOUNT CRED-
10 ITED THE BUYER FOR A TRADE-IN AS REQUIRED BY SECTION 251 OF THE
11 MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.251, THE DEALER SHALL
12 PROVIDE THE OWNER OF THE MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED
13 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR
14 TITLED WATERCRAFT WHO IS SELLING THE MOTOR VEHICLE, AIRCRAFT,
15 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
16 TIONAL VEHICLE, OR TITLED WATERCRAFT TO THE DEALER WITH A CERTIF-
17 ICATE, SIGNED BY EACH PARTY, SPECIFYING ALL OF THE FOLLOWING
18 INFORMATION:

19 (A) THE YEAR, MAKE, MODEL, AND IDENTIFICATION NUMBER OF THE
20 MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY
21 OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATERCRAFT.

22 (B) THE NAME AND ADDRESS OF EACH PARTY.

23 (C) THE DEALER'S LICENSE NUMBER.

24 (D) THE PRICE PAID FOR THE MOTOR VEHICLE, AIRCRAFT,
25 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
26 TIONAL VEHICLE, OR TITLED WATERCRAFT.

1 (E) THE DATE OF PURCHASE.

2 (F) A STATEMENT INDICATING THAT THE SELLER MAY PRESENT THE
3 CERTIFICATE WHEN PURCHASING ANOTHER MOTOR VEHICLE, AIRCRAFT,
4 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
5 TIONAL VEHICLE, OR TITLED WATERCRAFT WITHIN 90 DAYS AFTER THE
6 DATE SPECIFIED ON THE CERTIFICATE FROM A PERSON LICENSED UNDER
7 THIS ACT.

8 (2) A PERSON RECEIVING A CERTIFICATE PRESCRIBED BY THIS SEC-
9 TION UPON THE SALE OF HIS OR HER MOTOR VEHICLE, AIRCRAFT,
10 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
11 TIONAL VEHICLE, OR TITLED WATERCRAFT TO A NEW DEALER OR A USED OR
12 SECONDHAND DEALER MAY PRESENT THE CERTIFICATE TO A PERSON SUBJECT
13 TO TAX UNDER THIS ACT UPON PURCHASING ANOTHER MOTOR VEHICLE, AIR-
14 CRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, REC-
15 REATIONAL VEHICLE, OR TITLED WATERCRAFT WITHIN 90 DAYS AFTER THE
16 DATE ON THE CERTIFICATE AS THE DATE THE PERSON SOLD HIS OR HER
17 MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY
18 OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATERCRAFT TO A
19 DEALER. A CERTIFICATE PRESENTED AT A SALE SHALL REDUCE THE TAX
20 ON THE MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY
21 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATER-
22 CRAFT FOR WHICH THE CERTIFICATE WAS PRESENTED. EXCEPT AS PRO-
23 VIDED BY THIS SECTION, A CERTIFICATE ISSUED PURSUANT TO THIS SEC-
24 TION IS NOT TRANSFERABLE.

25 (3) A PERSON SUBJECT TO TAX UNDER THIS ACT WHO, UPON MAKING
26 A SALE AT RETAIL OF A MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED
27 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR

1 TITLED WATERCRAFT, RECEIVES FROM THE PURCHASER A COMPLETED
2 CERTIFICATE THAT EVIDENCES A SALE OF A MOTOR VEHICLE, AIRCRAFT,
3 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
4 TIONAL VEHICLE, OR TITLED WATERCRAFT BY THE PURCHASER TO A NEW
5 DEALER OR A USED OR SECONDHAND DEALER WITHIN 90 DAYS BEFORE THE
6 SALE SHALL NOTE THE DATE OF THE SALE FOR WHICH THE CERTIFICATE
7 WAS PRESENTED UPON THE CERTIFICATE AND FORWARD THE CERTIFICATE TO
8 THE DEPARTMENT WITH ANY TAX LIABILITY OF THE TAXPAYER ON THE SALE
9 AT RETAIL FOR WHICH THE CERTIFICATE WAS PRESENTED.

10 (4) THE DEPARTMENT SHALL PRESCRIBE AND DISTRIBUTE CERTIFI-
11 CATES TO BE USED FOR PURPOSES OF THIS SECTION.

12 (5) FOR PURPOSES OF SECTION 27 OF 1941 PA 122, MCL 205.27,
13 AND THE PENALTIES PROVIDED BY THAT SECTION, A CERTIFICATE UNDER
14 THIS SECTION IS CONSIDERED A RETURN.

15 SEC. 8A. (1) UPON THE PURCHASE FROM A PRIVATE INDIVIDUAL OF
16 A USED OR SECONDHAND MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED
17 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR
18 TITLED WATERCRAFT BY AN INDIVIDUAL WHO IS NOT A NEW DEALER, OR A
19 USED OR SECONDHAND DEALER AND UPON THE REQUEST OF THE SELLER,
20 BOTH PARTIES TO THE TRANSACTION SHALL SIGN A CERTIFICATE TO BE
21 PROVIDED BY THE SELLER SPECIFYING ALL OF THE FOLLOWING:

22 (A) THE YEAR, MAKE, MODEL, AND IDENTIFICATION NUMBER OF THE
23 MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY
24 OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATERCRAFT.

25 (B) THE NAME AND ADDRESS OF EACH PARTY.

1 (C) THE PRICE PAID FOR THE MOTOR VEHICLE, AIRCRAFT,
2 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT,
3 RECREATIONAL VEHICLE, OR TITLED WATERCRAFT.

4 (D) THE DATE OF PURCHASE.

5 (E) A STATEMENT INDICATING THAT WHEN PURCHASING ANOTHER
6 MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY
7 OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATERCRAFT WITHIN
8 90 DAYS AFTER THE DATE SPECIFIED ON THE CERTIFICATE FROM A PERSON
9 LICENSED AND SUBJECT TO TAX UNDER THIS ACT, THE SELLER OF THE
10 USED MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY
11 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATER-
12 CRAFT MAY PRESENT THE CERTIFICATE TO THE TAXPAYER TO REDUCE THE
13 TAX ON THE MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY
14 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATER-
15 CRAFT FOR WHICH THE CERTIFICATE WAS PRESENTED.

16 (2) A PERSON RECEIVING A CERTIFICATE PURSUANT TO SUBSECTION
17 (1) UPON THE SALE OF HIS OR HER MOTOR VEHICLE, AIRCRAFT,
18 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
19 TIONAL VEHICLE, OR TITLED WATERCRAFT TO ANOTHER INDIVIDUAL MAY
20 PRESENT THE CERTIFICATE TO A PERSON SUBJECT TO TAX UNDER THIS ACT
21 UPON PURCHASING ANOTHER MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED
22 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR
23 TITLED WATERCRAFT WITHIN 90 DAYS AFTER THE DATE OF SALE OF THE
24 USED MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY
25 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATER-
26 CRAFT SPECIFIED ON THE CERTIFICATE. A CERTIFICATE PRESENTED AT A
27 SALE SHALL REDUCE THE TAX ON THE MOTOR VEHICLE, AIRCRAFT,

1 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT,
2 RECREATIONAL VEHICLE, OR TITLED WATERCRAFT FOR WHICH THE CERTIFI-
3 CATE WAS PRESENTED. EXCEPT AS PROVIDED BY THIS SECTION, A CER-
4 TIFICATE ISSUED PURSUANT TO THIS SECTION IS NOT TRANSFERABLE.

5 (3) IF A PERSON SUBJECT TO TAX UNDER THIS ACT MAKES A SALE
6 AND RECEIVES FROM THE PURCHASER A CERTIFICATE EVIDENCING A PRIOR
7 SALE OF A USED MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF
8 HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
9 WATERCRAFT, THE TAXPAYER SHALL NOTE THE DATE OF THE PRIOR SALE ON
10 THE CERTIFICATE. IF THE SALE OF THE USED MOTOR VEHICLE, AIR-
11 CRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, REC-
12 REATIONAL VEHICLE, OR TITLED WATERCRAFT OCCURRED WITHIN 90 DAYS
13 BEFORE THE SALE AT RETAIL, THE TAXPAYER SHALL FORWARD THE CERTIF-
14 ICATE TO THE DEPARTMENT WITH ANY TAX LIABILITY OF THE TAXPAYER ON
15 THE SALE FOR WHICH THE CERTIFICATE WAS PRESENTED.

16 (4) THE DEPARTMENT SHALL PRESCRIBE AND DISTRIBUTE CERTIFI-
17 CATES TO BE USED FOR PURPOSES OF THIS SECTION. CERTIFICATES
18 SHALL BE AVAILABLE AT ALL OFFICES OF THE SECRETARY OF STATE.

19 (5) FOR PURPOSES OF SECTION 27 OF 1941 PA 122, MCL 205.27,
20 AND THE PENALTIES PROVIDED BY THAT SECTION, A CERTIFICATE UNDER
21 THIS SECTION IS CONSIDERED A RETURN.