

HOUSE BILL No. 4549

April 22, 1999, Introduced by Reps. Gosselin, Kowall, Sanborn, Kuipers, Voorhees, Vear, Caul, Kukuk, Vander Roest, Garcia, Bishop, Bradstreet and DeRossett 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.

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.

10 (b) "Use" means the exercise of a right or power over
11 tangible personal property incident to the ownership of that

1 property including transfer of the property in a transaction
2 where possession is given.

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

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

21 (e) "Purchase" means to acquire for a consideration, whether
22 the acquisition is effected by a transfer of title, of posses-
23 sion, or of both, or a license to use or consume; whether the
24 transfer is absolute or conditional, and by whatever means the
25 transfer is effected; and whether consideration is a price or
26 rental in money, or by way of exchange or barter.

1 (f) "Price" means the aggregate value in money of anything
2 paid or delivered, or promised to be paid or delivered, by a
3 consumer to a seller in the consummation and complete performance
4 of the transaction by which tangible personal property or serv-
5 ices are purchased or rented for storage, use, or other consump-
6 tion in this state, without a deduction for the cost of the prop-
7 erty sold, cost of materials used, labor or service cost, inter-
8 est or discount paid, or any other expense. PRICE DOES NOT
9 INCLUDE A SEPARATELY ITEMIZED CHARGE BY THE LESSOR TO THE LESSEE
10 FOR ANY PROPERTY TAX PAID ON LEASED PROPERTY. The price of tangi-
11 ble personal property, for affixation to real estate, withdrawn
12 by a 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, or titled watercraft is the full retail price
6 of the motor vehicle, trailer coach, or titled watercraft being
7 purchased. The tax collected by the seller from the consumer or
8 lessee under this act is not considered part of the price, but is
9 a tax collection for the benefit of the state, and a person other
10 than the state shall not derive a benefit from the collection or
11 payment of this tax. A price does not include an assessment
12 imposed under the convention and tourism marketing act, 1980 PA
13 383, MCL 141.881 to 141.889, 1974 PA 263, MCL 141.861 to 141.867,
14 the state convention facility development act, 1985 PA 106, MCL
15 207.621 to 207.640, the regional tourism marketing act, 1989 PA
16 244, MCL 141.891 to 141.900, 1991 PA 180, MCL 207.751 to 207.759,
17 or the community convention or tourism marketing act, 1980 PA
18 395, MCL 141.871 to 141.880, that was added to charges for rooms
19 or lodging otherwise subject, pursuant to section 3a, to tax
20 under this act. Price does not include specific charges for
21 technical support or for adapting or modifying prewritten, stan-
22 dard, or canned computer software programs to a purchaser's needs
23 or equipment if the charges are separately stated and
24 identified. The tax imposed under this act shall not be computed
25 or collected on rental receipts if the tangible personal property
26 rented or leased has previously been subjected to a Michigan
27 sales or use tax when purchased by the lessor.

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

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

9 (i) "Department" means the revenue division of the depart-
10 ment of treasury.

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

13 (k) "Tangible personal property" includes computer software
14 offered for general use by the public or software modified or
15 adapted to the user's needs or equipment by the seller, only if
16 the software is available from a seller of software on an as is
17 basis or as an end product without modification or adaptation.
18 Tangible personal property does not include computer software
19 originally designed for the exclusive use and special needs of
20 the purchaser. As used in this subdivision, "computer software"
21 means a set of statements or instructions that when incorporated
22 in a machine usable medium is capable of causing a machine or
23 device having information processing capabilities to indicate,
24 perform, or achieve a particular function, task, or result.

25 (l) "Tangible personal property" does not include a commer-
26 cial advertising element if the commercial advertising element is
27 used to create or develop a print, radio, television, or other

1 advertisement, the commercial advertising element is discarded or
2 returned to the provider after the advertising message is com-
3 pleted, and the commercial advertising element is custom devel-
4 oped by the provider for the purchaser. As used in this subdivi-
5 sion, "commercial advertising element" means a negative or posi-
6 tive photographic image, an audiotape or videotape master, a
7 layout, a manuscript, writing of copy, a design, artwork, an
8 illustration, retouching, and mechanical or keyline
9 instructions. "Tangible personal property" includes black and
10 white or full color process separation elements, an audiotape
11 reproduction, or a videotape reproduction.

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