

SENATE BILL No. 824

November 8, 2001, Introduced by Senators EMMONS, DUNASKISS and GARCIA and referred to the Committee on Finance.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 3a (MCL 205.93a), as amended by 1998 PA 366,
and by adding section 3b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3a. The use or consumption of the following services
2 is taxed under this act in the same manner as tangible personal
3 property is taxed under this act:

4 (a) Intrastate telephone, telegraph, leased wire, and other
5 similar communications OTHER THAN MOBILE TELECOMMUNICATIONS
6 SERVICE, including local telephone exchange and long distance
7 telephone service that both originates and terminates in
8 Michigan, and telegraph, private line, and teletypewriter service
9 between places in Michigan, but excluding telephone service by
10 coin-operated installations, switchboards,

1 concentrator-identifiers, interoffice circuitry and their
2 accessories for telephone answering service, and directory adver-
3 tising proceeds.

4 (b) Rooms or lodging furnished by hotelkeepers, motel opera-
5 tors, and other persons furnishing accommodations that are avail-
6 able to the public on the basis of a commercial and business
7 enterprise, irrespective of whether or not membership is required
8 for use of the accommodations, except rooms and lodging rented
9 for a continuous period of more than 1 month. As used in this
10 act, "hotel" or "motel" means a building or group of buildings in
11 which the public may obtain accommodations for a consideration,
12 including, without limitation, such establishments as inns,
13 motels, tourist homes, tourist houses or courts, lodging houses,
14 rooming houses, nudist camps, apartment hotels, resort lodges and
15 cabins, camps operated by other than nonprofit organizations but
16 not including those licensed under 1973 PA 116, MCL 722.111 to
17 722.128, and any other building or group of buildings in which
18 accommodations are available to the public, except accommodations
19 rented for a continuous period of more than 1 month and accommo-
20 dations furnished by hospitals or nursing homes.

21 (c) Interstate telephone communications that either origi-
22 nate or terminate in this state and for which the charge for the
23 service is billed to a Michigan service address or phone number
24 by the provider either within or outside this state including
25 calls between this state and any place within or without the
26 United States of America outside of this state. However, if the
27 tax under this act is levied at a rate of 6%, this subdivision

1 does not apply to a wide area telecommunication service or a
2 similar type service, an 800 prefix service or similar type serv-
3 ice, an interstate private network and related usage charges, or
4 an international call either inbound or outbound.

5 (d) After December 31, 1998, the laundering or cleaning of
6 textiles under a sale, rental, or service agreement with a term
7 of at least 5 days. This subdivision does not apply to the laun-
8 dering or cleaning of textiles used by a restaurant or retail
9 sales business. As used in this subdivision, "restaurant" means
10 a food service establishment defined and licensed under the
11 public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

12 (E) MOBILE TELECOMMUNICATIONS SERVICES WITH THE SOURCING OF
13 CHARGES MADE ACCORDING TO THE PROVISIONS IN SECTION 3B.

14 SEC. 3B. (1) AS USED IN THIS SECTION:

15 (A) "CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES" MEANS
16 ANY CHARGE FOR OR ASSOCIATED WITH THE PROVISION OF COMMERCIAL
17 MOBILE RADIO SERVICES AS DEFINED IN 47 C.F.R. 20.3 IN EFFECT ON
18 JUNE 1, 1999 OR ANY CHARGE FOR OR ASSOCIATED WITH A SERVICE PRO-
19 VIDED AS AN ADJUNCT TO A COMMERCIAL MOBILE RADIO SERVICE THAT IS
20 BILLED TO A CUSTOMER BY OR FOR THE CUSTOMER'S HOME SERVICE PRO-
21 VIDER REGARDLESS OF WHETHER THE INDIVIDUAL TRANSMISSION ORIGI-
22 NATES OR TERMINATES WITHIN THE LICENSED SERVICE AREA OF THE HOME
23 SERVICE PROVIDER.

24 (B) "CUSTOMER" MEANS THE PERSON THAT CONTRACTS WITH THE HOME
25 SERVICE PROVIDER FOR MOBILE TELECOMMUNICATIONS SERVICES OR THE
26 END USER OF THE MOBILE TELECOMMUNICATIONS SERVICE IF THE END USER
27 IS NOT THE CONTRACTING PARTY BUT ONLY FOR PURPOSES OF DETERMINING

1 THE PLACE OF PRIMARY USE. CUSTOMER DOES NOT INCLUDE A RESELLER
2 OF MOBILE TELECOMMUNICATIONS SERVICE OR A SERVING CARRIER UNDER
3 AN ARRANGEMENT TO SERVE THE CUSTOMER OUTSIDE THE HOME SERVICE
4 PROVIDER'S LICENSED SERVICE AREA.

5 (C) "HOME SERVICE PROVIDER" MEANS THE FACILITIES BASED CAR-
6 RIER OR RESELLER WITH WHOM THE CUSTOMER CONTRACTS FOR MOBILE
7 TELECOMMUNICATIONS SERVICE.

8 (D) "LICENSED SERVICE AREA" MEANS THE GEOGRAPHIC AREA IN
9 WHICH THE HOME SERVICE PROVIDER IS AUTHORIZED BY LAW OR CONTRACT
10 TO PROVIDE COMMERCIAL MOBILE RADIO SERVICE TO THE CUSTOMER.

11 (E) "MOBILE TELECOMMUNICATIONS SERVICE" MEANS COMMERCIAL
12 MOBILE RADIO SERVICE, AS DEFINED IN 47 C.F.R. 20.3 IN EFFECT ON
13 JUNE 1, 1999.

14 (F) "PLACE OF PRIMARY USE" MEANS THE STREET ADDRESS REPRESENTATIVE OF WHERE THE CUSTOMER'S USE OF THE MOBILE TELECOMMUNICATIONS SERVICE PRIMARILY OCCURS. THAT LOCATION MUST BE THE RESIDENTIAL STREET ADDRESS OR THE PRIMARY BUSINESS STREET ADDRESS OF THE CUSTOMER THAT IS WITHIN THE LICENSED SERVICE AREA OF THE HOME SERVICE PROVIDER.

20 (G) "RESELLER" MEANS A PROVIDER WHO PURCHASES TELECOMMUNICATION SERVICES FROM ANOTHER TELECOMMUNICATIONS SERVICE PROVIDER AND THEN RESELLS, USES AS A COMPONENT PART OF, OR INTEGRATES THE PURCHASED SERVICE INTO A MOBILE TELECOMMUNICATIONS SERVICE.
24 RESELLER DOES NOT INCLUDE A SERVING CARRIER WITH WHICH A HOME SERVICE PROVIDER ARRANGES FOR THE SERVICES TO ITS CUSTOMERS OUTSIDE THE HOME SERVICE PROVIDER'S LICENSED SERVICE AREA.

1 (H) "SERVING CARRIER" MEANS A FACILITIES BASED CARRIER
2 PROVIDING MOBILE TELECOMMUNICATIONS SERVICE TO A CUSTOMER OUTSIDE
3 THE HOME SERVICE PROVIDER'S OR RESELLER'S LICENSED SERVICE AREA.

4 (2) MOBILE TELECOMMUNICATIONS SERVICES PROVIDED IN THIS
5 STATE TO A CUSTOMER, THE CHARGES FOR WHICH ARE BILLED BY OR FOR
6 THE CUSTOMER'S HOME SERVICE PROVIDER, ARE CONSIDERED TO BE PRO-
7 VIDED BY THE CUSTOMER'S HOME SERVICE PROVIDER. ALL CHARGES FOR
8 MOBILE TELECOMMUNICATIONS SERVICES THAT ARE CONSIDERED TO BE PRO-
9 VIDED BY THE CUSTOMER'S HOME SERVICE PROVIDER ARE SUBJECT TO TAX
10 UNDER THIS ACT, REGARDLESS OF WHERE THE MOBILE TELECOMMUNICATIONS
11 SERVICES ORIGINATE, TERMINATE, OR PASS THROUGH. A CUSTOMER WHOSE
12 PLACE OF PRIMARY USE IS OUTSIDE THIS STATE IS NOT SUBJECT TO THE
13 TAX.

14 (3) IF A CUSTOMER BELIEVES THAT THE AMOUNT OF TAX OR AN
15 ASSIGNMENT OF PLACE OF PRIMARY USE OR TAXING JURISDICTION
16 INCLUDED BILLING IS ERRONEOUS, THE CUSTOMER SHALL NOTIFY THE HOME
17 SERVICE PROVIDER IN WRITING. THE CUSTOMER SHALL INCLUDE IN THE
18 WRITTEN NOTIFICATION THE CUSTOMER'S STREET ADDRESS FOR THE
19 CUSTOMER'S PLACE OF PRIMARY USE, THE ACCOUNT NAME AND NUMBER FOR
20 WHICH THE CUSTOMER REQUESTS THE CORRECTION, A DESCRIPTION OF THE
21 ERROR ASSERTED BY THE CUSTOMER, AND ANY OTHER INFORMATION THAT
22 THE HOME SERVICE PROVIDER REASONABLY REQUIRES TO PROCESS THE
23 REQUEST.

24 (4) NOT LATER THAN THE SIXTIETH DAY AFTER THE DATE THE HOME
25 SERVICE PROVIDER RECEIVES A REQUEST UNDER SUBSECTION (3), THE
26 HOME SERVICE PROVIDER SHALL REVIEW THE PROVIDER'S RECORDS AND THE
27 ELECTRONIC DATABASE OR ENHANCED ZIP CODE TO DETERMINE THE CORRECT

1 AMOUNT OF THE TAX IMPOSED OR THE ASSIGNMENT OF THE CUSTOMER'S
2 PLACE OF PRIMARY USE OR TAXING JURISDICTION, AS APPROPRIATE. IF
3 THE HOME SERVICE PROVIDER DETERMINES THAT THE AMOUNT OF TAX
4 IMPOSED OR THE ASSIGNMENT OF PLACE OF PRIMARY USE OR TAXING
5 JURISDICTION IS INCORRECT, THE HOME SERVICE PROVIDER SHALL COR-
6 RECT THE ERROR AND REFUND OR CREDIT ANY AMOUNT OF TAX ERRONEOUSLY
7 COLLECTED FROM THE CUSTOMER. THE HOME SERVICE PROVIDER SHALL
8 CORRECT THE ERROR AND REFUND OR CREDIT THE AMOUNT OF TAX ERRONE-
9 OUSLY COLLECTED FROM THE CUSTOMER FOR A PERIOD OF UP TO 4 YEARS.
10 IF THE HOME SERVICE PROVIDER DETERMINES THAT THE AMOUNT OF TAX
11 IMPOSED OR THE ASSIGNMENT OF PLACE OF PRIMARY USE OR TAXING
12 JURISDICTION IS CORRECT, THE HOME SERVICE PROVIDER SHALL PROVIDE
13 A WRITTEN EXPLANATION TO THE CUSTOMER. THE PROCEDURES PRESCRIBED
14 BY THIS SUBSECTION ARE THE FIRST COURSE OF REMEDY AVAILABLE TO A
15 CUSTOMER REQUESTING A CORRECTION OF ASSIGNMENT OF PLACE OF PRI-
16 MARY USE OR OF TAXING JURISDICTION OR A REFUND OF OR OTHER COM-
17 PENSATION FOR TAXES ERRONEOUSLY COLLECTED BY THE HOME SERVICE
18 PROVIDER.

19 (5) A HOME SERVICE PROVIDER IS RESPONSIBLE FOR OBTAINING AND
20 MAINTAINING THE CUSTOMER'S PLACE OF PRIMARY USE. SUBJECT TO SUB-
21 SECTION (7), AND IF THE HOME SERVICE PROVIDER'S RELIANCE ON
22 INFORMATION PROVIDED BY ITS CUSTOMERS IS IN GOOD FAITH, A TAXING
23 JURISDICTION SHALL ALLOW A HOME SERVICE PROVIDER TO RELY ON THE
24 APPLICABLE RESIDENTIAL OR BUSINESS STREET ADDRESS SUPPLIED BY THE
25 HOME SERVICE PROVIDER'S CUSTOMER AND NOT HOLD A HOME SERVICE PRO-
26 VIDER LIABLE FOR ANY ADDITIONAL TAXES BASED ON A DIFFERENT
27 DETERMINATION OF THE PLACE OF PRIMARY USE FOR TAXES THAT ARE

1 CUSTOMARILY PASSED ON TO THE CUSTOMER AS A SEPARATE ITEMIZED
2 CHARGE.

3 (6) EXCEPT AS PROVIDED IN SUBSECTION (7), A HOME SERVICE
4 PROVIDER MAY TREAT THE ADDRESS USED BY THE HOME SERVICE PROVIDER
5 FOR TAX PURPOSES FOR ANY CUSTOMER UNDER A SERVICE CONTRACT OR
6 AGREEMENT IN EFFECT 2 YEARS AFTER THE DATE OF THE ENACTMENT OF
7 SECTIONS 116 TO 126 OF TITLE 4 OF THE UNITED STATES CODE, 4
8 U.S.C. 116 TO 126, AS THAT CUSTOMER'S PLACE OF PRIMARY USE FOR
9 THE REMAINING TERM OF THE SERVICE CONTRACT OR AGREEMENT, EXCLUD-
10 ING ANY EXTENSION OR RENEWAL OF THE SERVICE CONTRACT OR AGREE-
11 MENT, FOR PURPOSES OF DETERMINING THE TAXING JURISDICTIONS TO
12 WHICH THE TAXES FOR MOBILE TELECOMMUNICATIONS SERVICES ARE
13 REMITTED.

14 (7) THE DEPARTMENT MAY DETERMINE THAT THE ADDRESS USED FOR
15 PURPOSES OF DETERMINING IF THE TAX IS DUE FOR MOBILE TELECOMMUNI-
16 CATIONS SERVICES DOES NOT MEET THE DEFINITION OF PLACE OF PRIMARY
17 USE UNDER SUBSECTION (1)(F) AND GIVE BINDING NOTICE TO THE HOME
18 SERVICE PROVIDER TO CHANGE THE PLACE OF PRIMARY USE ON A PROSPEC-
19 TIVE BASIS FROM THE DATE OF NOTICE OF DETERMINATION. BEFORE THE
20 STATE GIVES A NOTICE OF DETERMINATION, THE CUSTOMER SHALL BE
21 GIVEN AN OPPORTUNITY TO DEMONSTRATE IN ACCORDANCE WITH APPLICABLE
22 STATE ADMINISTRATIVE PROCEDURES THAT THE ADDRESS IS THE
23 CUSTOMER'S PLACE OF PRIMARY USE. THE STATE MAY DETERMINE THAT
24 THE ASSIGNMENT OF A TAXING JURISDICTION BY A HOME SERVICE PRO-
25 VIDER DOES NOT REFLECT THE CORRECT TAXING JURISDICTION AND GIVE
26 BINDING NOTICE TO THE HOME SERVICE PROVIDER TO CHANGE THE
27 ASSIGNMENT ON A PROSPECTIVE BASIS FROM THE DATE OF NOTICE OF

1 DETERMINATION. THE HOME SERVICE PROVIDER SHALL BE GIVEN AN
2 OPPORTUNITY TO DEMONSTRATE IN ACCORDANCE WITH APPLICABLE STATE
3 ADMINISTRATIVE PROCEDURES THAT THE ASSIGNMENT REFLECTS THE COR-
4 RECT TAXING JURISDICTION.

5 (8) THE DEPARTMENT MAY REQUEST THAT THE HOME SERVICE PRO-
6 VIDER AGGREGATE AND SEPARATE CHARGES NOT SUBJECT TO THE TAX ON
7 ITS CUSTOMER BILLINGS AND IN ITS BOOKS AND RECORDS THAT ARE KEPT
8 IN THE REGULAR COURSE OF BUSINESS TO AVOID TAXATION OF NONTAXABLE
9 CHARGES.

10 Enacting section 1. This amendatory act takes effect August
11 1, 2002.