

# SENATE BILL No. 1370

May 30, 2002, Introduced by Senator EMMONS and referred to the Committee on Finance.

A bill to amend 1937 PA 94, entitled  
"Use tax act,"  
by amending sections 2 and 3 (MCL 205.92 and 205.93), section 2  
as amended by 2000 PA 391 and section 3 as amended by 2002 PA  
110.

**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, LIMITED LIABILITY COMPANY, estate, trust, receiver,  
6 trustee, syndicate, the United States, this state, county, or any  
7 other group or combination acting as a unit, and the plural as  
8 well as the singular number, unless the intention to give a more  
9 limited meaning is disclosed 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, 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  
13 PA 383, MCL 141.881 to 141.889, 1974 PA 263, MCL 141.861 to  
14 141.867, the state convention facility development act, 1985  
15 PA 106, MCL 207.621 to 207.640, the regional tourism marketing  
16 act, 1989 PA 244, MCL 141.891 to 141.900, 1991 PA 180,  
17 MCL 207.751 to 207.759, or the community convention or tourism  
18 marketing act, 1980 PA 395, MCL 141.871 to 141.880, that was  
19 added to charges for rooms or lodging otherwise subject, pursuant  
20 to section 3a, to tax under this act. Price does not include  
21 specific charges for technical support or for adapting or modify-  
22 ing prewritten, standard, or canned computer software programs to  
23 a purchaser's needs or equipment if the charges are separately  
24 stated and identified. The tax imposed under this act shall not  
25 be computed or collected on rental receipts if the tangible per-  
26 sonal property rented or leased has previously been subjected to  
27 a Michigan 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" beginning September 20,  
26 1999, includes electricity, natural or artificial gas, or steam  
27 and also the transmission and distribution of electricity used by

1 the consumer or user of the electricity, whether the electricity  
2 is purchased from the delivering utility or from another  
3 provider.

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

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

25 Sec. 3. (1) There is levied upon and there shall be col-  
26 lected from every person in this state a specific tax for the  
27 privilege of using, storing, or consuming tangible personal

1 property in this state at a rate equal to 6% of the price of the  
2 property or services specified in section 3a. Penalties and  
3 interest shall be added to the tax if applicable as provided in  
4 this act. For the purpose of the proper administration of this  
5 act and to prevent the evasion of the tax, it is presumed that  
6 tangible personal property purchased is subject to the tax if  
7 brought into the state within 90 days of the purchase date and is  
8 considered as acquired for storage, use, or other consumption in  
9 this state.

10 (2) The tax imposed by this section for the privilege of  
11 using, storing, or consuming a vehicle, ORV, ~~mobile home~~  
12 MANUFACTURED HOUSING, aircraft, snowmobile, or watercraft shall  
13 be collected before the transfer of the vehicle, ORV, ~~mobile~~  
14 ~~home~~ MANUFACTURED HOUSING, aircraft, snowmobile, or watercraft,  
15 except a transfer to a licensed dealer or retailer for purposes  
16 of resale that arises by reason of a transaction made by a person  
17 who does not transfer vehicles, ORVs, ~~mobile homes~~ MANUFACTURED  
18 HOUSING, aircraft, snowmobiles, or watercraft in the ordinary  
19 course of his or her business done in this state. The tax on a  
20 vehicle, ORV, snowmobile, and watercraft shall be collected by  
21 the secretary of state before the transfer of the vehicle, ORV,  
22 snowmobile, or watercraft registration. The tax on ~~a mobile~~  
23 ~~home~~ MANUFACTURED HOUSING shall be collected by the department  
24 of consumer and industry services, mobile home commission, or its  
25 agent before the transfer of the certificate of title. The tax  
26 on an aircraft shall be collected by the department of treasury.  
27 Notwithstanding any limitation contained in section 2 and except

1 as provided in this subsection, the price tax base of any  
2 vehicle, ORV, ~~mobile home~~ MANUFACTURED HOUSING, aircraft, snow-  
3 mobile, or watercraft subject to taxation under this act shall be  
4 not less than its retail dollar value at the time of acquisition  
5 as fixed pursuant to rules promulgated by the department. The  
6 price tax base of a new or previously owned car or truck held for  
7 resale by a dealer and that is not exempt under section 4(1)(c)  
8 is the purchase price of the car or truck multiplied by 2.5% plus  
9 \$30.00 per month beginning with the month that the dealer uses  
10 the car or truck in a nonexempt manner.

11 (3) The following transfers or purchases are not subject to  
12 use tax:

13 (a) A transaction or a portion of a transaction if the  
14 transferee or purchaser is the spouse, mother, father, brother,  
15 sister, child, stepparent, stepchild, stepbrother, stepsister,  
16 grandparent, grandchild, legal ward, or a legally appointed  
17 guardian with a certified letter of guardianship, of the  
18 transferor.

19 (b) A transaction or a portion of a transaction if the  
20 transfer is a gift to a beneficiary in the administration of an  
21 estate.

22 (c) If a vehicle, ORV, ~~mobile home~~ MANUFACTURED HOUSING,  
23 aircraft, snowmobile, or watercraft that has once been subjected  
24 to the Michigan sales or use tax is transferred in connection  
25 with the organization, reorganization, dissolution, or partial  
26 liquidation of an incorporated or unincorporated business and the  
27 beneficial ownership is not changed.



1 (d) If an insurance company licensed to conduct business in  
2 this state acquires ownership of a late model distressed vehicle  
3 as defined in section 12a of the Michigan vehicle code, 1949  
4 PA 300, MCL 257.12a, through payment of damages in response to a  
5 claim or when the person who owned the vehicle before the insur-  
6 ance company reacquires ownership from the company as part of the  
7 settlement of a claim.

8 (4) The department may utilize the services, information, or  
9 records of any other department or agency of state government in  
10 the performance of its duties under this act, and other depart-  
11 ments or agencies of state government are required to furnish  
12 those services, information, or records upon the request of the  
13 department.