

HOUSE BILL No. 5165

September 13, 2005, Introduced by Reps. Robertson, Taub, Marleau, Green, David Law, Gosselin, Shaffer, Nitz, Baxter, Amos, Rocca, Hoogendyk, Gonzales, Garfield, Kahn and Vander Veen 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 2004 PA 172.

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,
4 municipal or private corporation whether or not organized for
5 profit, company, limited liability company, estate, trust,
6 receiver, trustee, syndicate, the United States, this state,
7 county, or any other group or combination acting as a unit, and the
8 plural as well as the singular number, unless the intention to give
9 a more limited meaning is disclosed by the context.

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

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

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

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

1 (f) "Purchase price" or "price" means the total amount of
2 consideration paid by the consumer to the seller, including cash,
3 credit, property, and services, for which tangible personal
4 property or services are sold, leased, or rented, valued in money,
5 whether received in money or otherwise, and applies to the measure
6 subject to use tax. **THE PRICE OF A MOTOR VEHICLE IS THE FULL RETAIL**
7 **PRICE OF THE MOTOR VEHICLE BEING PURCHASED MINUS THE AGREED-UPON**
8 **VALUE OF ANY MOTOR VEHICLE USED AS PART PAYMENT OF THE PURCHASE**
9 **PRICE.** Purchase price includes the following subparagraphs (i)
10 through (vi) and excludes subparagraphs (vii) through (viii):

11 (i) Seller's cost of the property sold.

12 (ii) Cost of materials used, labor or service cost, interest,
13 losses, costs of transportation to the seller, taxes imposed on the
14 seller other than taxes imposed by this act, and any other expense
15 of the seller.

16 (iii) Charges by the seller for any services necessary to
17 complete the sale, other than the following:

18 (A) An amount received or billed by the taxpayer for
19 remittance to the employee as a gratuity or tip, if the gratuity or
20 tip is separately identified and itemized on the guest check or
21 billed to the customer.

22 (B) Labor or service charges involved in maintenance and
23 repair work on tangible personal property of others if separately
24 itemized.

25 (iv) Delivery charges incurred or to be incurred before the
26 completion of the transfer of ownership of tangible personal
27 property from the seller to the purchaser.

1 (v) Installation charges incurred or to be incurred before the
2 completion of the transfer of ownership of tangible personal
3 property from the seller to the purchaser.

4 (vi) Credit for any trade-in.

5 (vii) Interest, financing, or carrying charges from credit
6 extended on the sale of personal property or services, if the
7 amount is separately stated on the invoice, bill of sale, or
8 similar document given to the purchaser.

9 (viii) Any taxes legally imposed directly on the consumer that
10 are separately stated on the invoice, bill of sale, or similar
11 document given to the purchaser.

12 (g) "Consumer" means the person who has purchased tangible
13 personal property or services for storage, use, or other
14 consumption in this state and includes a person acquiring tangible
15 personal property if engaged in the business of constructing,
16 altering, repairing, or improving the real estate of others.

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

20 (i) "Department" means the department of treasury.

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

23 (k) "Tangible personal property" means personal property that
24 can be seen, weighed, measured, felt, or touched or that is in any
25 other manner perceptible to the senses and includes electricity,
26 water, gas, steam, and prewritten computer software.

27 (l) "Textiles" means goods that are made of or incorporate

1 woven or nonwoven fabric, including, but not limited to, clothing,
2 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,
3 pillows, pillowcases, tablecloths, napkins, aprons, linens, floor
4 mops, floor mats, and thread. Textiles also include materials used
5 to repair or construct textiles, or other goods used in the rental,
6 sale, or cleaning of textiles.

7 (m) "Interstate motor carrier" means a person who operates or
8 causes to be operated a qualified commercial motor vehicle on a
9 public road or highway in this state and at least 1 other state or
10 Canadian province.

11 (n) "Qualified commercial motor vehicle" means that term as
12 defined in section 1(i), (j), and (k) of the motor carrier fuel tax
13 act, 1980 PA 119, MCL 207.211.

14 (o) "Diesel fuel" means that term as defined in section 2(p)
15 of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

16 (p) "Sale" means a transaction by which tangible personal
17 property or services are purchased or rented for storage, use, or
18 other consumption in this state.