

HOUSE BILL No. 5556

December 12, 2007, Introduced by Rep. Bieda and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 2, 2b, 3a, 3b, 3c, 4d, 4i, 7, 13, 14a, and 14b
(MCL 205.92, 205.92b, 205.93a, 205.93b, 205.93c, 205.94d, 205.94i,
205.97, 205.103, 205.104a, and 205.104b), sections 2 and 7 as
amended by 2007 PA 103, section 2b as amended by 2006 PA 428,
section 3a as amended by 2007 PA 93, section 3b as added by 2002 PA
456, sections 3c, 13, 14a, and 14b as added and section 4d as
amended by 2004 PA 172, and section 4i as added by 1986 PA 41; and
to repeal acts and parts of acts.

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

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

8 (b) "Use" means the exercise of a right or power over tangible
9 personal property incident to the ownership of that property
10 including transfer of the property in a transaction where
11 possession is given. Converting tangible personal property acquired
12 for a use exempt from the tax levied under this act to a use not
13 exempt from the tax levied under this act is a taxable use.

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

17 (d) "Seller" means the person from whom a purchase is made and
18 includes every person selling tangible personal property or
19 services for storage, use, or other consumption in this state. If,
20 in the opinion of the department, it is necessary for the efficient
21 administration of this act to regard a salesperson, representative,
22 peddler, or canvasser as the agent of a dealer, distributor,
23 supervisor, or employer under whom the person operates or from whom
24 he or she obtains tangible personal property or services sold by
25 him or her for storage, use, or other consumption in this state,
26 irrespective of whether or not he or she is making the sales on his
27 or her own behalf or on behalf of the dealer, distributor,

1 supervisor, or employer, the department may so consider him or her,
2 and may consider the dealer, distributor, supervisor, or employer
3 as the seller for the purpose of this act.

4 (e) "Purchase" means to acquire for a consideration, whether
5 the acquisition is effected by a transfer of title, of possession,
6 or of both, or a license to use or consume; whether the transfer is
7 absolute or conditional, and by whatever means the transfer is
8 effected; and whether consideration is a price or rental in money,
9 or by way of exchange or barter. Purchase includes converting
10 tangible personal property acquired for a use exempt from the tax
11 levied under this act to a use not exempt from the tax levied under
12 this act.

13 (f) "Purchase price" or "price" means the total amount of
14 consideration paid by the consumer to the seller, including cash,
15 credit, property, and services, for which tangible personal
16 property or services are sold, leased, or rented, valued in money,
17 whether received in money or otherwise, and applies to the measure
18 subject to use tax. Purchase price includes the following
19 subparagraphs (i) through ~~(vi)~~ **(vii)** and excludes subparagraphs ~~(vii)~~
20 **(viii)** through ~~(viii)~~ **(ix)** :

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

22 (ii) Cost of materials used, labor or service cost, interest,
23 losses, costs of transportation to the seller, taxes imposed on the
24 seller other than taxes imposed by this act, and any other expense
25 of the seller.

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

1 (A) An amount received or billed by the taxpayer for
2 remittance to the employee as a gratuity or tip, if the gratuity or
3 tip is separately identified and itemized on the guest check or
4 billed to the customer.

5 (B) Labor or service charges involved in maintenance and
6 repair work on tangible personal property of others if separately
7 itemized.

8 (iv) Delivery charges incurred or to be incurred before the
9 completion of the transfer of ownership of tangible personal
10 property **SUBJECT TO THE TAX LEVIED UNDER THIS ACT** from the seller
11 to the purchaser.

12 (v) Installation charges incurred or to be incurred before the
13 completion of the transfer of ownership of tangible personal
14 property from the seller to the purchaser.

15 (vi) Credit for any trade-in.

16 (vii) **CONSIDERATION RECEIVED BY THE SELLER FROM THIRD PARTIES**
17 **IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

18 (A) **THE SELLER ACTUALLY RECEIVES CONSIDERATION FROM A PARTY**
19 **OTHER THAN THE PURCHASER AND THE CONSIDERATION IS DIRECTLY RELATED**
20 **TO A PRICE REDUCTION OR DISCOUNT ON THE SALE.**

21 (B) **THE SELLER HAS AN OBLIGATION TO PASS THE PRICE REDUCTION**
22 **OR DISCOUNT THROUGH TO THE PURCHASER.**

23 (C) **THE AMOUNT OF THE CONSIDERATION ATTRIBUTABLE TO THE SALE**
24 **IS FIXED AND DETERMINABLE BY THE SELLER AT THE TIME OF THE SALE OF**
25 **THE ITEM TO THE PURCHASER.**

26 (D) **ONE OF THE FOLLOWING CRITERIA IS MET:**

27 (I) **THE PURCHASER PRESENTS A COUPON, CERTIFICATE, OR OTHER**

1 DOCUMENTATION TO THE SELLER TO CLAIM A PRICE REDUCTION OR DISCOUNT
2 WHERE THE COUPON, CERTIFICATE, OR DOCUMENTATION IS AUTHORIZED,
3 DISTRIBUTED, OR GRANTED BY A THIRD PARTY WITH THE UNDERSTANDING
4 THAT THE THIRD PARTY WILL REIMBURSE ANY SELLER TO WHOM THE COUPON,
5 CERTIFICATE, OR DOCUMENTATION IS PRESENTED.

6 (II) THE PURCHASER IDENTIFIES HIMSELF OR HERSELF TO THE SELLER
7 AS A MEMBER OF A GROUP OR ORGANIZATION ENTITLED TO A PRICE
8 REDUCTION OR DISCOUNT. A PREFERRED CUSTOMER CARD THAT IS AVAILABLE
9 TO ANY PATRON DOES NOT CONSTITUTE MEMBERSHIP IN A GROUP OR
10 ORGANIZATION.

11 (III) THE PRICE REDUCTION OR DISCOUNT IS IDENTIFIED AS A THIRD
12 PARTY PRICE REDUCTION OR DISCOUNT ON THE INVOICE RECEIVED BY THE
13 PURCHASER OR ON A COUPON, CERTIFICATE, OR OTHER DOCUMENTATION
14 PRESENTED BY THE PURCHASER.

15 (viii) ~~(vii)~~—Interest, financing, or carrying charges from credit
16 extended on the sale of personal property or services, if the
17 amount is separately stated on the invoice, bill of sale, or
18 similar document given to the purchaser.

19 (ix) ~~(viii)~~—Any taxes legally imposed directly on the consumer
20 that are separately stated on the invoice, bill of sale, or similar
21 document given to the purchaser.

22 (g) "Consumer" means the person who has purchased tangible
23 personal property or services for storage, use, or other
24 consumption in this state and includes, but is not limited to, 1 or
25 more of the following:

26 (i) A person acquiring tangible personal property if engaged in
27 the business of constructing, altering, repairing, or improving the

1 real estate of others.

2 (ii) A person who has converted tangible personal property or
3 services acquired for storage, use, or consumption in this state
4 that is exempt from the tax levied under this act to storage, use,
5 or consumption in this state that is not exempt from the tax levied
6 under this act.

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

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

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

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

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

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

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

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

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

9 (q) "Convert" means putting a service or tangible personal
10 property acquired for a use exempt from the tax levied under this
11 act at the time of acquisition to a use that is not exempt from the
12 tax levied under this act, whether the use is in whole or in part,
13 or permanent or not permanent. A motor vehicle purchased for resale
14 by a new vehicle dealer licensed under section 248(8)(a) of the
15 Michigan vehicle code, 1949 PA 300, MCL 257.248, and not titled in
16 the name of the dealer shall not be considered to be converted
17 prior to sale or lease by that dealer.

18 Sec. 2b. As used in this act:

19 (a) "Alcoholic beverage" means a beverage suitable for human
20 consumption that contains 1/2 of 1% or more of alcohol by volume.

21 **(B) "BUNDLED TRANSACTION" MEANS THE PURCHASE OF 2 OR MORE**
22 **DISTINCT AND IDENTIFIABLE PRODUCTS, EXCEPT REAL PROPERTY AND**
23 **SERVICES TO REAL PROPERTY, WHERE THE PRODUCTS ARE SOLD FOR A SINGLE**
24 **NONITEMIZED PRICE. A BUNDLED TRANSACTION DOES NOT INCLUDE THE SALE**
25 **OF ANY PRODUCTS IN WHICH THE SALES PRICE VARIES, OR IS NEGOTIABLE,**
26 **BASED ON THE SELECTION BY THE PURCHASER OF THE PRODUCTS INCLUDED IN**
27 **THE TRANSACTION. AS USED IN THIS SUBDIVISION:**

1 (i) "DISTINCT AND IDENTIFIABLE PRODUCTS" DOES NOT INCLUDE ANY
2 OF THE FOLLOWING:

3 (A) PACKAGING, SUCH AS CONTAINERS, BOXES, SACKS, BAGS, AND
4 BOTTLES OR OTHER MATERIALS SUCH AS WRAPPING, LABELS, TAGS, AND
5 INSTRUCTION GUIDES, THAT ACCOMPANY THE PURCHASE OF THE PRODUCTS AND
6 ARE INCIDENTAL OR IMMATERIAL TO THE PURCHASE OF THE PRODUCTS,
7 INCLUDING GROCERY SACKS, SHOEBOXES, DRY CLEANING GARMENT BAGS, AND
8 EXPRESS DELIVERY ENVELOPES AND BOXES.

9 (B) A PRODUCT PROVIDED FREE OF CHARGE WITH THE REQUIRED
10 PURCHASE OF ANOTHER PRODUCT. A PRODUCT IS PROVIDED FREE OF CHARGE
11 IF THE SALES PRICE OF THE PRODUCT PURCHASED DOES NOT VARY DEPENDING
12 ON THE INCLUSION OF THE PRODUCT PROVIDED FREE OF CHARGE.

13 (C) ITEMS INCLUDED IN PURCHASE PRICE.

14 (ii) "PURCHASE PRICE" MEANS THE PRICE PAID BY THE SELLER FOR
15 THE PROPERTY.

16 (iii) "SALES PRICE" MEANS THAT TERM AS DEFINED IN SECTION 1 OF
17 THE GENERAL SALES TAX ACT, 1933 PA 167, MCL 205.51.

18 (iv) "SINGLE NONITEMIZED PRICE" DOES NOT INCLUDE A PRICE THAT
19 IS SEPARATELY IDENTIFIED BY PRODUCT ON BINDING SALES OR OTHER
20 SUPPORTING SALES-RELATED DOCUMENTATION MADE AVAILABLE TO THE
21 PURCHASER IN PAPER OR ELECTRONIC FORM, INCLUDING, BUT NOT LIMITED
22 TO, AN INVOICE, BILL OF SALE, RECEIPT, CONTRACT, SERVICE AGREEMENT,
23 LEASE AGREEMENT, PERIODIC NOTICE OF RATES AND SERVICES, RATE CARD,
24 OR PRICE LIST.

25 (v) BUNDLED TRANSACTION DOES NOT INCLUDE ANY OF THE FOLLOWING:

26 (A) THE PURCHASE OF TANGIBLE PERSONAL PROPERTY AND A SERVICE
27 IF THE TANGIBLE PERSONAL PROPERTY IS ESSENTIAL TO THE USE OF THE

1 SERVICE AND IS PROVIDED EXCLUSIVELY IN CONNECTION WITH THE SERVICE
2 AND THE TRUE OBJECT OF THE TRANSACTION IS THE SERVICE.

3 (B) THE PURCHASE OF SERVICES IF 1 SERVICE IS PROVIDED THAT IS
4 ESSENTIAL TO THE USE OR RECEIPT OF A SECOND SERVICE AND THE FIRST
5 SERVICE IS PROVIDED EXCLUSIVELY IN CONNECTION WITH THE SECOND
6 SERVICE AND THE TRUE OBJECT OF THE TRANSACTION IS THE SECOND
7 SERVICE.

8 (C) A TRANSACTION THAT INCLUDES TAXABLE AND NONTAXABLE
9 PRODUCTS AND THE PURCHASE PRICE OF THE TAXABLE PRODUCTS IS DE
10 MINIMIS. AS USED IN THIS SUB-SUBPARAGRAPH, "DE MINIMIS" MEANS THE
11 SELLER'S PURCHASE PRICE OR SALES PRICE OF THE TAXABLE PRODUCTS IS
12 10% OR LESS OF THE TOTAL PURCHASE PRICE OR SALES PRICE OF THE
13 PRODUCTS. A SELLER SHALL USE THE FULL TERM OF A SERVICE CONTRACT TO
14 DETERMINE IF THE TAXABLE PRODUCTS ARE DE MINIMIS. A SELLER SHALL
15 USE EITHER THE PURCHASE PRICE OR THE SALES PRICE OF THE PRODUCTS TO
16 DETERMINE IF THE TAXABLE PRODUCTS ARE DE MINIMIS. A SELLER SHALL
17 NOT USE A COMBINATION OF THE PURCHASE PRICE AND SALES PRICE OF THE
18 PRODUCTS TO DETERMINE IF THE TAXABLE PRODUCTS ARE DE MINIMIS.

19 (D) THE RETAIL SALE OF EXEMPT TANGIBLE PERSONAL PROPERTY AND
20 TAXABLE TANGIBLE PERSONAL PROPERTY IF ALL OF THE FOLLOWING
21 CONDITIONS ARE SATISFIED:

22 (I) THE TRANSACTION INCLUDES FOOD AND FOOD INGREDIENTS,
23 PRESCRIPTION OR OVER-THE-COUNTER DRUGS, DURABLE MEDICAL EQUIPMENT,
24 MOBILITY ENHANCING EQUIPMENT, OR PROSTHETIC DEVICES.

25 (II) WHERE THE SELLER'S PURCHASE PRICE OR SALES PRICE OF THE
26 TAXABLE TANGIBLE PERSONAL PROPERTY IS 50% OR LESS OF THE TOTAL
27 PURCHASE PRICE OR SALES PRICE OF THE BUNDLED TANGIBLE PERSONAL

1 PROPERTY. A SELLER MAY NOT USE A COMBINATION OF THE PURCHASE PRICE
2 AND SALES PRICE OF THE TANGIBLE PERSONAL PROPERTY WHEN MAKING THE
3 50% DETERMINATION FOR A TRANSACTION.

4 (C) ~~(b)~~—"Computer" means an electronic device that accepts
5 information in digital or similar form and manipulates it for a
6 result based on a sequence of instructions.

7 (D) ~~(e)~~—"Computer software" means a set of coded instructions
8 designed to cause a computer or automatic data processing equipment
9 to perform a task.

10 (E) ~~(d)~~—"Delivered electronically" means delivered from the
11 seller to the purchaser by means other than tangible storage media.

12 (F) ~~(e)~~—"Delivery charges" means charges by the seller for
13 preparation and delivery to a location designated by the purchaser
14 of tangible personal property or services. Delivery charges
15 include, but are not limited to, transportation, shipping, postage,
16 handling, crating, and packing. Beginning September 1, 2004,
17 delivery charges do not include the charges for delivery of direct
18 mail if the charges are separately stated on an invoice or similar
19 billing document given to the purchaser. **IF A SHIPMENT INCLUDES**
20 **BOTH EXEMPT PROPERTY AND TAXABLE PROPERTY, THE SELLER SHALL**
21 **ALLOCATE THE DELIVERY CHARGE USING 1 OF THE FOLLOWING METHODS:**

22 (i) MULTIPLY THE DELIVERY PRICE BY A FRACTION, THE NUMERATOR OF
23 WHICH IS THE TOTAL SALES PRICES OF THE TAXABLE PROPERTY AND THE
24 DENOMINATOR OF WHICH IS THE TOTAL SALES PRICES OF ALL PROPERTY IN
25 THE SHIPMENT.

26 (ii) MULTIPLY THE DELIVERY PRICE BY A FRACTION, THE NUMERATOR
27 OF WHICH IS THE TOTAL WEIGHT OF THE TAXABLE PROPERTY AND THE

1 DENOMINATOR OF WHICH IS THE TOTAL WEIGHT OF ALL PROPERTY IN THE
2 SHIPMENT.

3 (G) ~~(f)~~—"Dietary supplement" means any product, other than
4 tobacco, intended to supplement the diet that is all of the
5 following:

6 (i) Required to be labeled as a dietary supplement identifiable
7 by the "supplemental facts" box found on the label as required by
8 21 CFR 101.36.

9 (ii) Contains 1 or more of the following dietary ingredients:

10 (A) A vitamin.

11 (B) A mineral.

12 (C) An herb or other botanical.

13 (D) An amino acid.

14 (E) A dietary substance for use by humans to supplement the
15 diet by increasing the total dietary intake.

16 (F) A concentrate, metabolite, constituent, extract, or
17 combination of any ingredient listed in sub-subparagraphs (A)
18 through (E).

19 (iii) Intended for ingestion in tablet, capsule, powder,
20 softgel, gelcap, or liquid form, or if not intended for ingestion
21 in 1 of those forms, is not represented as conventional food or for
22 use as a sole item of a meal or of the diet.

23 (H) ~~(g)~~—"Direct mail" means printed material delivered or
24 distributed by United States mail or other delivery service to a
25 mass audience or to addresses on a mailing list provided by the
26 purchaser or at the direction of the purchaser when the cost of the
27 items is not billed directly to the recipients, including tangible

1 personal property supplied directly or indirectly by the purchaser
2 to the direct mail seller for inclusion in the package containing
3 the printed material but not including multiple items of printed
4 material delivered to a single address.

5 (I) ~~(h)~~—"Drug" means a compound, substance, or preparation, or
6 any component of a compound, substance, or preparation, other than
7 food or food ingredients, dietary supplements, or alcoholic
8 beverages, intended for human use that is 1 or more of the
9 following:

10 (i) Recognized in the official United States pharmacopoeia,
11 official homeopathic pharmacopoeia of the United States, or
12 official national formulary, or in any of their supplements.

13 (ii) Intended for use in the diagnosis, cure, mitigation,
14 treatment, or prevention of disease.

15 (iii) Intended to affect the structure or any function of the
16 body.

17 (J) ~~(i)~~—"Durable medical equipment" means equipment for home
18 use, other than mobility enhancing equipment, dispensed pursuant to
19 a prescription, including **DURABLE MEDICAL EQUIPMENT** repair or
20 replacement parts, ~~for that equipment,~~ that does all of the
21 following:

22 (i) Can withstand repeated use.

23 (ii) Is primarily and customarily used to serve a medical
24 purpose.

25 (iii) Is not useful generally to a person in the absence of
26 illness or injury.

27 (iv) Is not worn in or on the body.

1 (K) "DURABLE MEDICAL EQUIPMENT REPAIR OR REPLACEMENT PARTS"
2 INCLUDES ALL COMPONENTS OR ATTACHMENTS USED IN CONJUNCTION WITH
3 DURABLE MEDICAL EQUIPMENT.

4 (l) ~~(j)~~—"Electronic" means relating to technology having
5 electrical, digital, magnetic, wireless, optical, electromagnetic,
6 or similar capabilities.

7 (m) ~~(k)~~—"Lease or rental" means any transfer of possession or
8 control of tangible personal property for a fixed or indeterminate
9 term for consideration and may include future options to purchase
10 or extend. This definition applies only to leases and rentals
11 entered into after September 1, 2004 and has no retroactive impact
12 on leases and rentals that existed on that date. Lease or rental
13 does not include the following **SUBPARAGRAPHS (i) THROUGH (iii) AND**
14 **INCLUDES SUBPARAGRAPH (iv) :**

15 (i) A transfer of possession or control of tangible personal
16 property under a security agreement or deferred payment plan that
17 requires the transfer of title upon completion of the required
18 payments.

19 (ii) A transfer of possession or control of tangible personal
20 property under an agreement requiring transfer of title upon
21 completion of the required payments and payment of an option price
22 that does not exceed \$100.00 or 1% of the total required payments,
23 whichever is greater.

24 (iii) The provision of tangible personal property along with an
25 operator for a fixed or indeterminate period of time, where that
26 operator is necessary for the equipment to perform as designed. To
27 be necessary, an operator must do more than maintain, inspect, or

1 set up the tangible personal property.

2 (iv) An agreement covering motor vehicles or trailers if the
3 amount of consideration may be increased or decreased by reference
4 to the amount realized upon sale or disposition of the property as
5 defined in 26 USC 7701(h)(1).

6 (N) ~~(l)~~—"Mobility enhancing equipment" means equipment, other
7 than durable medical equipment or a motor vehicle or equipment on a
8 motor vehicle normally provided by a motor vehicle manufacturer,
9 dispensed pursuant to a prescription, including repair or
10 replacement parts for that equipment, that is all of the following:

11 (i) Primarily and customarily used to provide or increase the
12 ability to move from 1 place to another and is appropriate for use
13 at home or on a motor vehicle.

14 (ii) Not generally used by a person with normal mobility.

15 (O) ~~(m)~~—"Prescription" means an order, formula, or recipe,
16 issued in any form of oral, written, electronic, or other means of
17 transmission by a licensed physician or other health professional
18 as defined in section 3501 of the insurance code of 1956, 1956 PA
19 218, MCL 500.3501. **FOR A HEARING AID, PRESCRIPTION INCLUDES AN**
20 **ORDER, INSTRUCTION, OR DIRECTION OF A HEARING AID DEALER OR**
21 **SALESPERSON LICENSED UNDER ARTICLE 13 OF THE OCCUPATIONAL CODE,**
22 **1980 PA 299, MCL 339.1301 TO 339.1309.**

23 (P) ~~(n)~~—"Prewritten computer software" means computer
24 software, including prewritten upgrades, that is delivered by any
25 means and that is not designed and developed by the author or other
26 creator to the specifications of a specific purchaser. Prewritten
27 computer software includes all of the following:

1 (i) Any combination of 2 or more prewritten computer software
2 programs or portions of prewritten computer software programs.

3 (ii) Computer software designed and developed by the author or
4 other creator to the specifications of a specific purchaser if it
5 is sold to a person other than that specific purchaser.

6 (iii) The modification or enhancement of prewritten computer
7 software or portions of prewritten computer software where the
8 modification or enhancement is designed and developed to the
9 specifications of a specific purchaser unless there is a
10 reasonable, separately stated charge or an invoice or other
11 statement of the price is given to the purchaser for the
12 modification or enhancement. If a person other than the original
13 author or creator modifies or enhances prewritten computer
14 software, that person is considered to be the author or creator of
15 only that person's modifications or enhancements.

16 (Q) ~~(e)~~ "Prosthetic device" means a replacement, corrective,
17 or supportive device, other than contact lenses and dental
18 prosthesis, dispensed pursuant to a prescription, including repair
19 or replacement parts for that device, worn on or in the body to do
20 1 or more of the following:

21 (i) Artificially replace a missing portion of the body.

22 (ii) Prevent or correct a physical deformity or malfunction of
23 the body.

24 (iii) Support a weak or deformed portion of the body.

25 (R) ~~(p)~~ "Tobacco" means cigarettes, cigars, chewing or pipe
26 tobacco, or any other item that contains tobacco.

27 Sec. 3a. (1) The use or consumption of the following services

1 is taxed under this act in the same manner as tangible personal
2 property is taxed under this act:

3 (a) Except as provided in section 3b, ~~intrastate telephone,~~
4 ~~telegraph, leased wire, and other similar communications, including~~
5 ~~local telephone exchange and long distance telephone service~~
6 **TELECOMMUNICATIONS SERVICES** that both ~~originates and terminates~~
7 **ORIGINATE AND TERMINATE** in this state, and ~~telegraph, private line,~~
8 ~~and teletypewriter service between places in this state, but~~
9 ~~excluding telephone service by coin-operated installations,~~
10 ~~switchboards, concentrator identifiers, interoffice circuitry and~~
11 ~~their accessories for telephone answering service, INCLUDING, BUT~~
12 **NOT LIMITED TO, INTRASTATE PRIVATE COMMUNICATIONS SERVICES,**
13 **ANCILLARY SERVICES, CONFERENCE BRIDGING SERVICE, 900 SERVICE, PAY**
14 **TELEPHONE SERVICE OTHER THAN COIN-OPERATED TELEPHONE SERVICE, AND**
15 **VALUE-ADDED NONVOICE DATA SERVICE, BUT EXCLUDING 800 SERVICE, COIN-**
16 **OPERATED TELEPHONE SERVICE, FIXED WIRELESS SERVICE, 1-WAY PAGING**
17 **SERVICE, PREPAID CALLING SERVICE, TELECOMMUNICATIONS NONRECURRING**
18 **CHARGES,** and directory advertising proceeds.

19 (b) Rooms or lodging furnished by hotelkeepers, motel
20 operators, and other persons furnishing accommodations that are
21 available to the public on the basis of a commercial and business
22 enterprise, irrespective of whether or not membership is required
23 for use of the accommodations, except rooms and lodging rented for
24 a continuous period of more than 1 month. As used in this act,
25 "hotel" or "motel" means a building or group of buildings in which
26 the public may obtain accommodations for a consideration,
27 including, without limitation, such establishments as inns, motels,

1 tourist homes, tourist houses or courts, lodging houses, rooming
2 houses, nudist camps, apartment hotels, resort lodges and cabins,
3 camps operated by other than nonprofit organizations but not
4 including those licensed under 1973 PA 116, MCL 722.111 to 722.128,
5 and any other building or group of buildings in which
6 accommodations are available to the public, except accommodations
7 rented for a continuous period of more than 1 month and
8 accommodations furnished by hospitals or nursing homes.

9 (c) Except as provided in section 3b, interstate ~~telephone~~
10 ~~communications~~ **TELECOMMUNICATIONS SERVICES** that either originate or
11 terminate in this state and for which the charge for the service is
12 billed to a service address in this state or phone number by the
13 provider either within or outside this state including, ~~calls~~
14 ~~between this state and any place within or without the United~~
15 ~~States of America outside of this state. This subdivision does not~~
16 ~~apply to a wide area telecommunication service or a similar type~~
17 ~~service, an 800 prefix service or similar type service, an~~
18 ~~interstate private network and related usage charges, or an~~
19 ~~international call either inbound or outbound. BUT NOT LIMITED TO,~~
20 **ANCILLARY SERVICES, CONFERENCE BRIDGING SERVICE, 900 SERVICE, PAY**
21 **TELEPHONE SERVICE OTHER THAN COIN-OPERATED TELEPHONE SERVICE, AND**
22 **VALUE-ADDED NONVOICE DATA SERVICES, BUT EXCLUDING INTERSTATE**
23 **PRIVATE COMMUNICATIONS SERVICE, 800 SERVICE, COIN-OPERATED**
24 **TELEPHONE SERVICE, FIXED WIRELESS SERVICE, 1-WAY PAGING SERVICE,**
25 **PREPAID CALLING SERVICE, TELECOMMUNICATIONS NONRECURRING CHARGES,**
26 **AND INTERNATIONAL TELECOMMUNICATIONS SERVICE.**

27 (d) The laundering or cleaning of textiles under a sale,

1 rental, or service agreement with a term of at least 5 days. This
2 subdivision does not apply to the laundering or cleaning of
3 textiles used by a restaurant or retail sales business. As used in
4 this subdivision, "restaurant" means a food service establishment
5 defined and licensed under the food law of 2000, 2000 PA 92, MCL
6 289.1101 to 289.8111.

7 (e) The transmission and distribution of electricity, whether
8 the electricity is purchased from the delivering utility or from
9 another provider, if the sale is made to the consumer or user of
10 the electricity for consumption or use rather than for resale.

11 (f) For a manufacturer who affixes its product to real estate
12 and maintains an inventory of its product that is available for
13 sale to others **OR WHO MAKES ITS PRODUCT AVAILABLE FOR SALE TO**
14 **OTHERS** by publication or price list, the direct production costs
15 and indirect production costs of the product affixed to the real
16 estate that are incident to and necessary for production or
17 manufacturing operations or processes, as defined by the
18 department.

19 (g) For a manufacturer who affixes its product to real estate
20 but does not maintain an inventory of its product available for
21 sale to others or make its product available for sale to others by
22 publication or price list, the sum of the materials cost of the
23 property and the cost of labor to manufacture, fabricate, or
24 assemble the property, but not the cost of labor to cut, bend,
25 assemble, or attach the property at the site for affixation to real
26 estate.

27 (2) If charges for intrastate telecommunications services or

1 telecommunications services between this state and another state
2 and other billed services not subject to the tax under this act are
3 aggregated with and not separately stated from charges for
4 telecommunications services that are subject to the tax under this
5 act, the nontaxable telecommunications services and other
6 nontaxable billed services are subject to the tax under this act
7 unless the service provider can reasonably identify charges for
8 telecommunications services not subject to the tax under this act
9 from its books and records that are kept in the regular course of
10 business.

11 (3) If charges for intrastate telecommunications services or
12 telecommunications services between this state and another state
13 and other billed services not subject to the tax under this act are
14 aggregated with and not separately stated from telecommunications
15 services that are subject to the tax under this act, a customer may
16 not rely upon the nontaxability of those telecommunications
17 services and other billed services unless the customer's service
18 provider separately states the charges for nontaxable
19 telecommunications services and other nontaxable billed services
20 from taxable telecommunications services or the service provider
21 elects, after receiving a written request from the customer in the
22 form required by the provider, to provide verifiable data based
23 upon the service provider's books and records that are kept in the
24 regular course of business that reasonably identify the nontaxable
25 services.

26 (4) **ALL OF THE FOLLOWING APPLY IN THE CASE OF A BUNDLED**
27 **TRANSACTION THAT INCLUDES TELECOMMUNICATIONS SERVICE, ANCILLARY**

1 SERVICE, INTERNET ACCESS, OR AUDIO OR VIDEO PROGRAMMING:

2 (A) IF THE PURCHASE PRICE IS ATTRIBUTABLE TO PRODUCTS THAT ARE
3 TAXABLE AND PRODUCTS THAT ARE NONTAXABLE, THE PORTION OF THE
4 PURCHASE PRICE ATTRIBUTABLE TO THE NONTAXABLE PRODUCTS MAY BE
5 SUBJECT TO TAX UNLESS THE PROVIDER CAN IDENTIFY BY REASONABLE AND
6 VERIFIABLE STANDARDS THAT PORTION FROM ITS BOOKS AND RECORDS THAT
7 ARE KEPT IN THE REGULAR COURSE OF BUSINESS FOR OTHER PURPOSES,
8 INCLUDING, BUT NOT LIMITED TO, NONTAX PURPOSES.

9 (B) IF THE PURCHASE PRICE IS ATTRIBUTABLE TO PRODUCTS THAT ARE
10 SUBJECT TO TAX AT DIFFERENT TAX RATES, THE TOTAL PURCHASE PRICE MAY
11 BE TREATED AS ATTRIBUTABLE TO THE PRODUCTS SUBJECT TO TAX AT THE
12 HIGHEST TAX RATE UNLESS THE PROVIDER CAN IDENTIFY BY REASONABLE AND
13 VERIFIABLE STANDARDS THE PORTION OF THE PURCHASE PRICE ATTRIBUTABLE
14 TO THE PRODUCTS SUBJECT TO TAX AT THE LOWER RATE FROM ITS BOOKS AND
15 RECORDS THAT ARE KEPT IN THE REGULAR COURSE OF BUSINESS FOR OTHER
16 PURPOSES, INCLUDING, BUT NOT LIMITED TO, NONTAX PURPOSES.

17 (C) THE PROVISIONS OF THIS SUBSECTION APPLY UNLESS OTHERWISE
18 PROVIDED BY FEDERAL LAW.

19 (5) ~~(4)~~—As used in this section:

20 (A) "ANCILLARY SERVICES" MEANS SERVICES THAT ARE ASSOCIATED
21 WITH OR INCIDENTAL TO THE PROVISION OF TELECOMMUNICATIONS SERVICES,
22 INCLUDING, BUT NOT LIMITED TO, DETAILED TELECOMMUNICATIONS BILLING,
23 DIRECTORY ASSISTANCE, VERTICAL SERVICE, AND VOICE MAIL SERVICES.

24 (B) "COIN-OPERATED TELEPHONE SERVICE" MEANS A
25 TELECOMMUNICATIONS SERVICE PAID FOR BY INSERTING MONEY INTO A
26 TELEPHONE THAT ACCEPTS DIRECT DEPOSITS OF MONEY TO OPERATE.

27 (C) "CONFERENCE BRIDGING SERVICE" MEANS AN ANCILLARY SERVICE

1 THAT LINKS 2 OR MORE PARTICIPANTS OF AN AUDIO OR VIDEO CONFERENCE
2 CALL AND MAY INCLUDE THE PROVISION OF A TELEPHONE NUMBER, BUT DOES
3 NOT INCLUDE THE TELECOMMUNICATIONS SERVICES USED TO REACH THE
4 CONFERENCE BRIDGE.

5 (D) "DETAILED TELECOMMUNICATIONS BILLING SERVICE" MEANS AN
6 ANCILLARY SERVICE OF SEPARATELY STATING INFORMATION PERTAINING TO
7 INDIVIDUAL CALLS ON A CUSTOMER'S BILLING STATEMENT.

8 (E) "DIRECTORY ASSISTANCE" MEANS AN ANCILLARY SERVICE OF
9 PROVIDING TELEPHONE NUMBER INFORMATION OR ADDRESS INFORMATION.

10 (F) ~~(a)~~—"Fabricate" means to modify or prepare tangible
11 personal property for affixation or assembly.

12 (G) "FIXED WIRELESS SERVICE" MEANS A TELECOMMUNICATIONS
13 SERVICE THAT PROVIDES RADIO COMMUNICATION BETWEEN FIXED POINTS.

14 (H) "INTERNATIONAL" MEANS A TELECOMMUNICATIONS SERVICE THAT
15 ORIGINATES OR TERMINATES IN THE UNITED STATES AND TERMINATES OR
16 ORIGINATES OUTSIDE THE UNITED STATES, RESPECTIVELY. UNITED STATES
17 INCLUDES THE DISTRICT OF COLUMBIA AND ANY POSSESSION OR TERRITORY
18 OF THE UNITED STATES.

19 (I) "INTERSTATE" MEANS A TELECOMMUNICATIONS SERVICE THAT
20 ORIGINATES IN 1 UNITED STATES STATE, TERRITORY, OR POSSESSION AND
21 TERMINATES IN A DIFFERENT UNITED STATES STATE, TERRITORY, OR
22 POSSESSION.

23 (J) "INTRASTATE" MEANS A TELECOMMUNICATIONS SERVICE THAT
24 ORIGINATES IN A UNITED STATES STATE, TERRITORY, OR POSSESSION AND
25 TERMINATES IN THE SAME UNITES STATES STATE, TERRITORY, OR
26 POSSESSION.

27 (K) ~~(b)~~—"Manufacture" means to convert or condition tangible

1 personal property by changing the form, composition, quality,
2 combination, or character of the property.

3 (I) ~~(e)~~—"Manufacturer" means a person who manufactures,
4 fabricates, or assembles tangible personal property.

5 (M) "PAGING SERVICE" MEANS A TELECOMMUNICATIONS SERVICE THAT
6 PROVIDES TRANSMISSION OF CODED RADIO SIGNALS FOR THE PURPOSE OF
7 ACTIVATING SPECIFIC PAGERS, WHICH MAY INCLUDE MESSAGES OR SOUNDS.

8 (N) "PAY TELEPHONE SERVICE" MEANS A TELECOMMUNICATIONS SERVICE
9 PROVIDED THROUGH ANY PAY TELEPHONE.

10 (O) "PREPAID CALLING SERVICE" MEANS THE RIGHT TO ACCESS
11 EXCLUSIVELY TELECOMMUNICATIONS SERVICES THAT MUST BE PAID FOR IN
12 ADVANCE AND THAT ENABLES THE ORIGINATION OF CALLS USING AN ACCESS
13 NUMBER OR AUTHORIZATION CODE, WHETHER MANUALLY OR ELECTRONICALLY
14 DIALED, AND THAT IS SOLD IN PREDETERMINED UNITS OR DOLLARS THAT
15 DECLINE WITH USE IN A KNOWN AMOUNT.

16 (P) "PRIVATE COMMUNICATIONS SERVICE" MEANS A
17 TELECOMMUNICATIONS SERVICE THAT ENTITLES THE CUSTOMER TO EXCLUSIVE
18 OR PRIORITY USE OF A COMMUNICATIONS CHANNEL OR GROUP OF CHANNELS
19 BETWEEN OR AMONG TERMINATION POINTS, REGARDLESS OF THE MANNER IN
20 WHICH THAT CHANNEL OR GROUP OF CHANNELS ARE CONNECTED, AND INCLUDES
21 SWITCHING CAPACITY, EXTENSION LINES, STATIONS, AND ANY OTHER
22 ASSOCIATED SERVICES THAT ARE PROVIDED IN CONNECTION WITH THE USE OF
23 THAT CHANNEL OR GROUP OF CHANNELS.

24 (Q) "TELECOMMUNICATIONS NONRECURRING CHARGES" MEANS AN AMOUNT
25 BILLED FOR THE INSTALLATION, CONNECTION, CHANGE, OR INITIATION OF
26 TELECOMMUNICATIONS SERVICE RECEIVED BY THE CUSTOMER.

27 (R) "TELECOMMUNICATIONS SERVICE" MEANS THE ELECTRONIC

1 TRANSMISSION, CONVEYANCE, OR ROUTING OF VOICE, DATA, AUDIO, VIDEO,
2 OR ANY OTHER INFORMATION OR SIGNALS TO A POINT, OR BETWEEN OR AMONG
3 POINTS, INCLUDING A TRANSMISSION, CONVEYANCE, OR ROUTING IN WHICH
4 COMPUTER PROCESSING APPLICATIONS ARE USED TO ACT ON THE FORM, CODE,
5 OR PROTOCOL OF THE CONTENT FOR PURPOSES OF TRANSMISSION,
6 CONVEYANCE, OR ROUTING WITHOUT REGARD TO WHETHER THAT SERVICE IS
7 REFERRED TO AS VOICE OVER INTERNET PROTOCOL SERVICES OR IS
8 CLASSIFIED BY THE FEDERAL COMMUNICATIONS COMMISSION AS ENHANCED OR
9 VALUE ADDED. TELECOMMUNICATIONS SERVICE DOES NOT INCLUDE ANY OF THE
10 FOLLOWING:

11 (i) DATA PROCESSING AND INFORMATION SERVICES THAT ALLOW DATA TO
12 BE GENERATED, ACQUIRED, STORED, PROCESSED, OR RETRIEVED AND
13 DELIVERED BY AN ELECTRONIC TRANSMISSION TO A PURCHASER WHERE THE
14 PURCHASER'S PRIMARY PURPOSE FOR THE UNDERLYING TRANSACTION IS THE
15 PROCESSED DATA OR INFORMATION.

16 (ii) INSTALLATION OR MAINTENANCE OF WIRING OR EQUIPMENT ON A
17 CUSTOMER'S PREMISES.

18 (iii) TANGIBLE PERSONAL PROPERTY.

19 (iv) ADVERTISING, INCLUDING, BUT NOT LIMITED TO, DIRECTORY
20 ADVERTISING.

21 (v) BILLING AND COLLECTION SERVICES PROVIDED TO THIRD PARTIES.

22 (vi) INTERNET ACCESS SERVICE.

23 (vii) RADIO AND TELEVISION AUDIO AND VIDEO PROGRAMMING
24 SERVICES, INCLUDING, BUT NOT LIMITED TO, CABLE SERVICE AS DEFINED
25 IN 47 USC 522(6) AND AUDIO AND VIDEO PROGRAMMING SERVICES DELIVERED
26 BY COMMERCIAL MOBILE RADIO SERVICE PROVIDERS AS DEFINED IN 47 CFR
27 20.3, REGARDLESS OF THE MEDIUM, INCLUDING THE FURNISHING OF

1 TRANSMISSION, CONVEYANCE, AND ROUTING OF THOSE SERVICES BY THE
2 PROGRAMMING SERVICE PROVIDER.

3 (viii) ANCILLARY SERVICES.

4 (ix) ANSWERING SERVICES, IF THE PRIMARY PURPOSE OF THE
5 TRANSACTION IS THE ANSWERING SERVICE RATHER THAN MESSAGE
6 TRANSMISSION.

7 (x) DIGITAL PRODUCTS DELIVERED ELECTRONICALLY, INCLUDING, BUT
8 NOT LIMITED TO, SOFTWARE, MUSIC, VIDEO, READING MATERIALS, OR RING
9 TONES.

10 (S) "VALUE-ADDED NONVOICE DATA SERVICE" MEANS A
11 TELECOMMUNICATIONS SERVICE IN WHICH COMPUTER PROCESSING
12 APPLICATIONS ARE USED TO ACT ON THE FORM, CONTENT, CODE, OR
13 PROTOCOL OF THE INFORMATION OR DATA PRIMARILY FOR A PURPOSE OTHER
14 THAN TRANSMISSION, CONVEYANCE, OR ROUTING.

15 (T) "VERTICAL SERVICE" MEANS AN ANCILLARY SERVICE THAT IS
16 OFFERED IN CONNECTION WITH 1 OR MORE TELECOMMUNICATIONS SERVICES
17 THAT OFFERS ADVANCED CALLING FEATURES THAT ALLOW CUSTOMERS TO
18 IDENTIFY CALLERS AND TO MANAGE MULTIPLE CALLS AND CALL CONNECTIONS,
19 INCLUDING CONFERENCE BRIDGING SERVICES.

20 (U) "VOICE MAIL SERVICE" MEANS AN ANCILLARY SERVICE THAT
21 ENABLES THE CUSTOMER TO STORE, SEND, OR RECEIVE RECORDED MESSAGES,
22 BUT DOES NOT INCLUDE ANY VERTICAL SERVICES THAT THE CUSTOMER MAY BE
23 REQUIRED TO HAVE IN ORDER TO UTILIZE THE VOICE MAIL SERVICE.

24 (V) "800 SERVICE" MEANS A TELECOMMUNICATIONS SERVICE THAT
25 ALLOWS A CALLER TO DIAL A TOLL-FREE NUMBER WITHOUT INCURRING A
26 CHARGE FOR THE CALL, TYPICALLY MARKETED UNDER THE DESIGNATION
27 "800", "855", "866", "877", OR "888" TOLL-FREE CALLING, OR ANY

1 SUBSEQUENT NUMBER DESIGNATED BY THE FEDERAL COMMUNICATIONS
2 COMMISSION.

3 (W) "900 SERVICE" MEANS AN INBOUND TOLL TELECOMMUNICATIONS
4 SERVICE PURCHASED BY A SUBSCRIBER THAT ALLOWS THE SUBSCRIBER'S
5 CUSTOMERS TO CALL IN TO THE SUBSCRIBER'S PRERECORDED ANNOUNCEMENT
6 OR LIVE SERVICE, TYPICALLY MARKETED UNDER THE DESIGNATION "900"
7 SERVICE, AND ANY SUBSEQUENT NUMBER DESIGNATED BY THE FEDERAL
8 COMMUNICATIONS COMMISSION, BUT DOES NOT INCLUDE A CHARGE FOR
9 COLLECTION SERVICES PROVIDED BY THE SELLER OF THE
10 TELECOMMUNICATIONS SERVICES TO THE SUBSCRIBER, OR THE SERVICE OR
11 PRODUCT SOLD BY THE SUBSCRIBER TO THE SUBSCRIBER'S CUSTOMER.

12 Sec. 3b. (1) The use or consumption of mobile
13 ~~telecommunications~~ **WIRELESS** services is subject to the tax levied
14 under this act in the same manner as tangible personal property
15 regardless of where the mobile ~~telecommunications~~ **WIRELESS** services
16 originate, terminate, or pass through, subject to all of the
17 following:

18 (a) Mobile ~~telecommunications~~ **WIRELESS** services provided to a
19 customer, the charges for which are billed by or for the customer's
20 home service provider, are considered to be provided by the
21 customer's home service provider if the customer's place of primary
22 use for the mobile ~~telecommunications~~ **WIRELESS** services is in this
23 state. If the customer's place of primary use for mobile
24 ~~telecommunications~~ **WIRELESS** services is outside of this state, the
25 mobile ~~telecommunications~~ **WIRELESS** services are not subject to the
26 tax levied under this act.

27 (b) A home service provider is responsible for obtaining and

1 maintaining a record of the customer's place of primary use.
2 Subject to subsection (2), in obtaining and maintaining a record of
3 the customer's place of primary use, a home service provider may do
4 all of the following:

5 (i) Rely in good faith on information provided by a customer as
6 to the customer's place of primary use.

7 (ii) Treat the address used for a customer under a service
8 contract or agreement in effect on August 1, 2002 as that
9 customer's place of primary use for the remaining term of the
10 service contract or agreement, excluding any extension or renewal
11 of the service contract or agreement.

12 (c) Notwithstanding section 9 and subject to subsection (5),
13 if the department chooses to create or provide a database that
14 complies with the provisions of 4 U.S.C. 119, a home service
15 provider shall use that database to determine the assignment of the
16 customer's place of primary use to this state. If a database is not
17 provided by the department, a home service provider may use an
18 enhanced zip code to determine the assignment of the customer's
19 place of primary use to this state. A home service provider that
20 uses a database provided by the department is not liable for any
21 tax that otherwise would be due solely as a result of an error or
22 omission in that database. A home service provider that uses an
23 enhanced zip code is not liable for any tax that otherwise would be
24 due solely as a result of an assignment of a street address to
25 another state if the home provider exercised due diligence to
26 ensure that the appropriate street addresses are assigned to this
27 state.

1 (d) If a customer believes that the amount of the tax levied
2 under this act or that the home service provider's record of the
3 customer's place of primary use is incorrect, the customer shall
4 notify the home service provider in writing and provide all of the
5 following information:

6 (i) The street address of the customer's place of primary use.

7 (ii) The account name and number for which the customer
8 requests the correction.

9 (iii) A description of the error asserted by the customer.

10 (iv) Any other information that the home service provider
11 reasonably requires to process the request.

12 (e) Not later than 60 days after the home service provider
13 receives a request under subdivision (d) or subsection (5)(b), the
14 home service provider shall review its record of the customer's
15 place of primary use and the customer's enhanced zip code to
16 determine the correct amount of the tax levied under this act. If
17 the home service provider determines that the tax levied under this
18 act or its record of the customer's place of primary use is
19 incorrect, the home service provider shall correct the error and
20 refund or credit any tax erroneously collected from the customer. A
21 refund under this subdivision shall not exceed a period of 4 years.
22 If the home service provider determines that the tax levied under
23 this act and the customer's place of primary use are correct, the
24 home service provider shall provide a written explanation of that
25 determination to the customer. The procedures prescribed in this
26 subdivision and in subdivision (d) are the first course of remedy
27 available to a customer requesting a correction of the provider's

1 record of place of primary use or a refund of taxes erroneously
2 collected by the home service provider.

3 (2) If the department makes a final determination that the
4 home service provider's record of a customer's place of primary use
5 is incorrect, the home service provider shall change its records to
6 reflect that final determination. The corrected record of a
7 customer's place of primary use shall be used to calculate the tax
8 levied under this act prospectively, from the date of the
9 department's final determination. The department shall not make a
10 final determination under this subsection before the department has
11 notified the customer that the department has found that the home
12 service provider's record of the customer's place of primary use is
13 incorrect and the customer has been afforded an opportunity to
14 appeal that finding. An appeal to the department shall be conducted
15 according to the provision of section 22 of 1941 PA 122, MCL
16 205.22.

17 (3) Notwithstanding section 8 and subject to section 5, if the
18 department makes a final determination under subsection (2) that a
19 customer's place of primary use is incorrect, a home service
20 provider is not liable for any taxes that would have been levied
21 under this act if the customer's place of primary use had been
22 correct.

23 (4) If charges for mobile ~~telecommunications~~ **WIRELESS** services
24 and other billed services not subject to the tax levied under this
25 act are aggregated with and not separately stated from charges for
26 mobile ~~telecommunications~~ **WIRELESS** services that are subject to the
27 tax levied under this act, the nontaxable mobile ~~telecommunications~~

1 **WIRELESS** services and other billed services are subject to the tax
2 levied under this act unless the home service provider can
3 reasonably identify billings for services not subject to the tax
4 levied under this act from its books and records kept in the
5 regular course of business.

6 (5) If charges for mobile ~~telecommunications~~**WIRELESS** services
7 and other billed services not subject to the tax levied under this
8 act are aggregated with and not separately stated from charges for
9 mobile ~~telecommunications~~**WIRELESS** services that are subject to the
10 tax levied under this act, a customer may not rely upon the exempt
11 status for those mobile ~~telecommunications~~**WIRELESS** services and
12 other billed services unless 1 or more of the following conditions
13 are satisfied:

14 (a) The customer's home service provider separately states the
15 charges for mobile ~~telecommunications~~**WIRELESS** services that are
16 exempt and other exempt billed services from taxable mobile
17 ~~telecommunications~~**WIRELESS** services.

18 (b) The home service provider elects, after receiving a
19 written request from the customer in the form required by the home
20 service provider, to identify the exempt mobile ~~telecommunications~~
21 **WIRELESS** services and other exempt billed services by reference to
22 the home service provider's books and records kept in the regular
23 course of business.

24 (6) This section is repealed as of the date of entry of a
25 final judgment by a court of competent jurisdiction that
26 substantially limits or impairs the essential elements of sections
27 116 to 126 of title 4 of the United States Code, 4 U.S.C. 116 to

1 126, and that final judgment is no longer subject to appeal.

2 (7) For an air-ground radiotelephone service, the tax under
3 this act is imposed at the location of the origination of the air-
4 ground radiotelephone service in this state as identified by the
5 home service provider or information received by the home service
6 provider from its servicing carrier.

7 (8) ALL OF THE FOLLOWING APPLY IN THE CASE OF A BUNDLED
8 TRANSACTION THAT INCLUDES TELECOMMUNICATIONS SERVICE, ANCILLARY
9 SERVICE, INTERNET ACCESS, OR AUDIO OR VIDEO PROGRAMMING:

10 (A) IF THE PURCHASE PRICE IS ATTRIBUTABLE TO PRODUCTS THAT ARE
11 TAXABLE AND PRODUCTS THAT ARE NONTAXABLE, THE PORTION OF THE
12 PURCHASE PRICE ATTRIBUTABLE TO THE NONTAXABLE PRODUCTS MAY BE
13 SUBJECT TO TAX UNLESS THE PROVIDER CAN IDENTIFY BY REASONABLE AND
14 VERIFIABLE STANDARDS THAT PORTION FROM ITS BOOKS AND RECORDS KEPT
15 IN THE REGULAR COURSE OF BUSINESS FOR OTHER PURPOSES, INCLUDING,
16 BUT NOT LIMITED TO, NONTAX PURPOSES.

17 (B) IF THE PURCHASE PRICE IS ATTRIBUTABLE TO PRODUCTS THAT ARE
18 SUBJECT TO TAX AT DIFFERENT TAX RATES, THE TOTAL PURCHASE PRICE MAY
19 BE TREATED AS ATTRIBUTABLE TO THE PRODUCTS SUBJECT TO TAX AT THE
20 HIGHEST TAX RATE UNLESS THE PROVIDER CAN IDENTIFY BY REASONABLE AND
21 VERIFIABLE STANDARDS THE PORTION OF THE PURCHASE PRICE ATTRIBUTABLE
22 TO THE PRODUCTS SUBJECT TO TAX AT THE LOWER RATE FROM ITS BOOKS AND
23 RECORDS KEPT IN THE REGULAR COURSE OF BUSINESS FOR OTHER PURPOSES,
24 INCLUDING, BUT NOT LIMITED TO, NONTAX PURPOSES.

25 (C) THE PROVISIONS OF THIS SUBSECTION SHALL APPLY UNLESS
26 OTHERWISE PROVIDED BY FEDERAL LAW.

27 (9) ~~(8)~~—As used in this section:

1 (a) "Air-ground radiotelephone service" means that term as
2 defined in 47 ~~C.F.R.~~**CFR** part 22.

3 (b) "Commercial mobile radio service" means that term as
4 defined in 47 ~~C.F.R.~~**CFR** 20.3.

5 (c) "Charge", "charges", or "charge for mobile
6 ~~telecommunications~~**WIRELESS** services" means any charge for, or
7 associated with, the provision of commercial mobile radio service,
8 or any charge for, or associated with, a service provided as an
9 adjunct to a commercial mobile radio service, that is billed to a
10 customer by or for the customer's home service provider regardless
11 of whether individual transmissions originate or terminate within
12 the licensed service area of the home service provider.

13 (d) "Customer" means 1 of the following, but does not include
14 a reseller or a serving carrier:

15 (i) The person who contracts with the home service provider for
16 mobile ~~telecommunications~~**WIRELESS** services.

17 (ii) If the end user of mobile ~~telecommunications~~**WIRELESS**
18 services is not the contracting party, then the end user of the
19 mobile ~~telecommunications~~**WIRELESS** service. This subparagraph
20 applies only for the purpose of determining the place of primary
21 use.

22 (e) "Enhanced zip code" means a United States postal zip code
23 of 9 or more digits.

24 (f) "Home service provider" means the facilities-based carrier
25 or reseller that enters into a contract with a customer for mobile
26 ~~telecommunications~~**WIRELESS** services.

27 (g) "Licensed service area" means the geographic area in which

1 a home service provider is authorized by law or contract to provide
2 commercial mobile radio services to its customers.

3 (h) "~~Mobile telecommunications~~ **WIRELESS** services" means
4 ~~commercial mobile radio services that originate and terminate in~~
5 ~~the same state or originate in 1 state and terminate in another~~
6 ~~state. Mobile telecommunications services do not include prepaid~~
7 ~~mobile telecommunications services or air ground radiotelephone~~
8 ~~service.~~ **A TELECOMMUNICATIONS SERVICE THAT IS TRANSMITTED,**
9 **CONVEYED, OR ROUTED, REGARDLESS OF THE TECHNOLOGY USED, WHEREBY THE**
10 **ORIGINATION OR TERMINATION POINTS OF THE TRANSMISSION, CONVEYANCE,**
11 **OR ROUTING ARE NOT FIXED, INCLUDING, BUT NOT LIMITED TO,**
12 **TELECOMMUNICATIONS SERVICES THAT ARE PROVIDED BY A COMMERCIAL**
13 **MOBILE RADIO SERVICE PROVIDER.**

14 (i) "Place of primary use" means the residential street
15 address or the primary business street address within the licensed
16 service area of the home service provider at which a customer
17 primarily uses ~~mobile telecommunications~~ **WIRELESS** services. **FOR**
18 **MOBILE WIRELESS SERVICES, PLACE OF PRIMARY USE SHALL BE WITHIN THE**
19 **LICENSED SERVICE AREA OF THE HOME SERVICE PROVIDER.**

20 (j) "~~Prepaid mobile telecommunications~~ **WIRELESS CALLING**
21 ~~service~~" means ~~the advance purchase of exclusive mobile~~
22 ~~telecommunications services, which enables the origination of calls~~
23 ~~using an access number or authorization code, whether manually or~~
24 ~~electronically dialed, if the remaining units of service are known~~
25 ~~by the provider of the service on a continuous basis~~ **A**
26 **TELECOMMUNICATIONS SERVICE THAT PROVIDES THE RIGHT TO UTILIZE**
27 **MOBILE WIRELESS SERVICE AS WELL AS OTHER NONTELECOMMUNICATIONS**

1 SERVICES, INCLUDING THE DOWNLOAD OF DIGITAL PRODUCTS DELIVERED
2 ELECTRONICALLY, CONTENT, AND ANCILLARY SERVICES, WHICH SHALL BE
3 PAID FOR IN ADVANCE AND THAT IS SOLD IN PREDETERMINED UNITS OR
4 DOLLARS THAT DECLINE WITH USE IN A KNOWN AMOUNT.

5 (k) "Reseller" means a ~~telecommunications~~ **WIRELESS** services
6 provider who purchases ~~telecommunications~~ **WIRELESS** services from
7 another ~~telecommunications~~ **WIRELESS** services provider and then
8 resells the ~~telecommunications~~ **WIRELESS** services, uses the
9 ~~telecommunications~~ **WIRELESS** services as a component part of a
10 mobile ~~telecommunications~~ **WIRELESS** service, or integrates the
11 ~~telecommunications~~ **WIRELESS** services into a mobile
12 ~~telecommunications~~ **WIRELESS** service. Reseller does not include a
13 serving carrier.

14 (l) "Serving carrier" means a facilities-based
15 ~~telecommunications~~ **WIRELESS** services provider that contracts with a
16 home service provider for mobile ~~telecommunications~~ **WIRELESS**
17 services to a customer outside of the home service provider's or
18 reseller's licensed service area.

19 (M) "TELECOMMUNICATIONS SERVICE" MEANS THE ELECTRONIC
20 TRANSMISSION, CONVEYANCE, OR ROUTING OF VOICE, DATA, AUDIO, VIDEO,
21 OR ANY OTHER INFORMATION OR SIGNALS TO A POINT, OR BETWEEN OR AMONG
22 POINTS, INCLUDING A TRANSMISSION, CONVEYANCE, OR ROUTING IN WHICH
23 COMPUTER PROCESSING APPLICATIONS ARE USED TO ACT ON THE FORM, CODE,
24 OR PROTOCOL OF THE CONTENT FOR PURPOSES OF TRANSMISSION,
25 CONVEYANCE, OR ROUTING WITHOUT REGARD TO WHETHER THAT SERVICE IS
26 REFERRED TO AS VOICE OVER INTERNET PROTOCOL SERVICES OR IS
27 CLASSIFIED BY THE FEDERAL COMMUNICATIONS COMMISSION AS ENHANCED OR

1 VALUE ADDED. TELECOMMUNICATIONS SERVICE DOES NOT INCLUDE ANY OF THE
2 FOLLOWING:

3 (i) DATA PROCESSING AND INFORMATION SERVICES THAT ALLOW DATA TO
4 BE GENERATED, ACQUIRED, STORED, PROCESSED, OR RETRIEVED AND
5 DELIVERED BY AN ELECTRONIC TRANSMISSION TO A PURCHASER WHERE THE
6 PURCHASER'S PRIMARY PURPOSE FOR THE UNDERLYING TRANSACTION IS THE
7 PROCESSED DATA OR INFORMATION.

8 (ii) INSTALLATION OR MAINTENANCE OF WIRING OR EQUIPMENT ON A
9 CUSTOMER'S PREMISES.

10 (iii) TANGIBLE PERSONAL PROPERTY.

11 (iv) ADVERTISING, INCLUDING, BUT NOT LIMITED TO, DIRECTORY
12 ADVERTISING.

13 (v) BILLING AND COLLECTION SERVICES PROVIDED TO THIRD PARTIES.

14 (vi) INTERNET ACCESS SERVICE.

15 (vii) RADIO AND TELEVISION AUDIO AND VIDEO PROGRAMMING
16 SERVICES, INCLUDING, BUT NOT LIMITED TO, CABLE SERVICE AS DEFINED
17 IN 47 USC 522(6) AND AUDIO AND VIDEO PROGRAMMING SERVICES DELIVERED
18 BY COMMERCIAL MOBILE RADIO SERVICE PROVIDERS, AS DEFINED IN 47 CFR
19 20.3, REGARDLESS OF THE MEDIUM, INCLUDING THE FURNISHING OF
20 TRANSMISSION, CONVEYANCE, AND ROUTING OF THOSE SERVICES BY THE
21 PROGRAMMING SERVICE PROVIDER.

22 (viii) ANCILLARY SERVICES.

23 (ix) ANSWERING SERVICES, IF THE PRIMARY PURPOSE OF THE
24 TRANSACTION IS THE ANSWERING SERVICE RATHER THAN MESSAGE
25 TRANSMISSION.

26 (x) DIGITAL PRODUCTS DELIVERED ELECTRONICALLY, INCLUDING, BUT
27 NOT LIMITED TO, SOFTWARE, MUSIC, VIDEO, READING MATERIALS, OR RING

1 **TONES.**

2 Sec. 3c. (1) Except for the defined telecommunications
3 services in section 3b and subsection (3), the sale of
4 telecommunications service sold on a call-by-call basis shall be
5 sourced to each level of taxing jurisdiction where the call
6 originates and terminates in that jurisdiction or each level of
7 taxing jurisdiction where the call either originates or terminates
8 and in which the service address is also located.

9 (2) Except for the defined telecommunications services in
10 section 3b and subsection (3), a sale of telecommunications
11 services sold on a basis other than a call-by-call basis is sourced
12 to the customer's place of primary use.

13 (3) The sale of the following telecommunications services
14 shall be sourced to each level of taxing jurisdiction as follows:

15 (a) A sale of post-paid calling service is sourced to the
16 origination point of the telecommunications signal as first
17 identified by either the seller's telecommunications system, or
18 information received by the seller from its service provider, where
19 the system used to transport such signals is not that of the
20 seller.

21 (b) A sale of prepaid calling service **OR PREPAID WIRELESS**
22 **CALLING SERVICE** is sourced in accordance with section 20. However,
23 for a sale of ~~mobile telecommunications service that is a prepaid~~
24 ~~telecommunications~~ **WIRELESS CALLING** service, the rule provided in
25 section 20(1)(e) shall include as an option the location associated
26 with the mobile telephone number.

27 (c) A sale of a private communication service is sourced as

1 follows:

2 (i) Service for a separate charge related to a customer channel
3 termination point is sourced to each level of jurisdiction in which
4 the customer channel termination point is located.

5 (ii) Service where all customer termination points are located
6 entirely within 1 jurisdiction or levels of jurisdiction is sourced
7 in the jurisdiction in which the customer channel termination
8 points are located.

9 (iii) Service for segments of a channel between 2 customer
10 channel termination points located in different jurisdictions and
11 which segment of channel is separately charged is sourced 50% in
12 each level of jurisdiction in which the customer channel
13 termination points are located.

14 (iv) Service for segments of a channel located in more than 1
15 jurisdiction or levels of jurisdiction and which segments are not
16 separately billed is sourced in each jurisdiction based on the
17 percentage determined by dividing the number of customer channel
18 termination points in the jurisdiction by the total number of
19 customer channel termination points.

20 **(D) THE SALE OF AN ANCILLARY SERVICE IS SOURCED TO THE**
21 **CUSTOMER'S PLACE OF PRIMARY USE.**

22 **(E) THE SALE OF INTERNET ACCESS SERVICE IS SOURCED TO THE**
23 **CUSTOMER'S PLACE OF PRIMARY USE.**

24 (4) As used in this section:

25 (a) ~~"Air to ground radiotelephone service" means a radio~~
26 ~~service, as that term is defined in 47 CFR part 22, in which common~~
27 ~~carriers are authorized to offer and provide radio~~

1 ~~telecommunications service for hire to subscribers in aircraft.~~
2 "ANCILLARY SERVICES" MEANS SERVICES THAT ARE ASSOCIATED WITH OR
3 INCIDENTAL TO THE PROVISION OF TELECOMMUNICATIONS SERVICES,
4 INCLUDING, BUT NOT LIMITED TO, DETAILED TELECOMMUNICATIONS BILLING,
5 DIRECTORY ASSISTANCE, VERTICAL SERVICE, AND VOICE MAIL SERVICES.

6 (b) "Call-by-call basis" means any method of charging for
7 telecommunications services where the price is measured by
8 individual calls.

9 ~~"Communications channel"~~ "CHANNEL" means a physical or
10 virtual path of communications over which signals are transmitted
11 between or among customer channel termination points.

12 (d) "Customer" means the person or entity that contracts with
13 the seller of telecommunications services. If the end user of
14 telecommunications services is not the contracting party, the end
15 user of the telecommunications service is the customer of the
16 telecommunications service for purposes of this section. Customer
17 does not include a reseller of telecommunications service or for
18 mobile telecommunications ~~WIRELESS~~ service of a serving carrier
19 under an agreement to serve the customer outside the home service
20 provider's licensed service area.

21 (e) "Customer channel termination point" means the location
22 where the customer either inputs or receives the communications.

23 (f) "End user" means the person who utilizes the
24 telecommunications service. In the case of an entity, "end user"
25 means the individual who utilizes the service on behalf of the
26 entity.

27 ~~— (g) "Home service provider" means the facilities based carrier~~

1 ~~or reseller that enters into a contract with a customer for mobile~~
2 ~~telecommunications services.~~

3 ~~—— (h) "Mobile telecommunications services" means commercial~~
4 ~~mobile radio services that originate and terminate in the same~~
5 ~~state or originate in 1 state and terminate in another state.~~
6 ~~Mobile telecommunications services do not include prepaid mobile~~
7 ~~telecommunications services or air-ground radiotelephone service.~~

8 (G) ~~(i)~~—"Place of primary use" means the street address
9 representative of where the customer's use of the
10 telecommunications service primarily occurs, which must be the
11 residential street address or the primary business street address
12 of the customer. For mobile telecommunications ~~WIRELESS~~ services,
13 place of primary use must be within the licensed service area of
14 the home service provider.

15 (H) ~~(j)~~—"Post-paid calling service" means the
16 telecommunications service obtained by making a payment on a call-
17 by-call basis either through the use of a credit card or payment
18 mechanism such as a bank card, travel card, credit card, or debit
19 card, or by charge made to a telephone number that is not
20 associated with the origination or termination of the
21 telecommunications service. A post-paid calling service includes a
22 telecommunications service, **EXCEPT A PREPAID WIRELESS CALLING**
23 **SERVICE**, that would be a prepaid calling service except it is not
24 exclusively a telecommunications service.

25 (I) ~~(k)~~—"Prepaid calling service" means the right to access
26 exclusively telecommunications services, which must be paid for in
27 advance and that enables the origination of calls using an access

1 number or authorization code, whether manually or electronically
2 dialed, and that is sold in predetermined units or dollars of which
3 the number declines with use in a known amount.

4 (J) "PREPAID WIRELESS CALLING SERVICE" MEANS A
5 TELECOMMUNICATIONS SERVICE THAT PROVIDES THE RIGHT TO UTILIZE
6 MOBILE WIRELESS SERVICE AS WELL AS OTHER NONTELECOMMUNICATIONS
7 SERVICES, INCLUDING THE DOWNLOAD OF DIGITAL PRODUCTS DELIVERED
8 ELECTRONICALLY, CONTENT, AND ANCILLARY SERVICES, WHICH SHALL BE
9 PAID FOR IN ADVANCE AND THAT IS SOLD IN PREDETERMINED UNITS OR
10 DOLLARS THAT DECLINE WITH USE IN A KNOWN AMOUNT.

11 (K) ~~(l)~~—"Private communication service" means a
12 telecommunications service that entitles the customer to exclusive
13 or priority use of a communications channel or group of channels
14 between or among termination points, regardless of the manner in
15 which the channel or channels are connected, and includes switching
16 capacity, extension lines, stations, and any other associated
17 services that are provided in connection with the use of such
18 channel or channels.

19 (l) ~~(m)~~—"Service address" means the following:

20 (i) The location of the telecommunications equipment to which a
21 customer's call is charged and from which the call originates or
22 terminates, regardless of where the call is billed or paid.

23 (ii) If the location in subparagraph (i) is not known, service
24 address means the origination point of the signal of the
25 telecommunications services first identified by either the seller's
26 telecommunications system or in information received by the seller
27 from its service provider, where the system used to transport the

1 signals is not that of the seller.

2 (iii) If the location in subparagraphs (i) and (ii) is not known,
3 the service address means the location of the customer's place of
4 primary use.

5 (M) "TELECOMMUNICATIONS SERVICE" MEANS THE ELECTRONIC
6 TRANSMISSION, CONVEYANCE, OR ROUTING OF VOICE, DATA, AUDIO, VIDEO,
7 OR ANY OTHER INFORMATION OR SIGNALS TO A POINT, OR BETWEEN OR AMONG
8 POINTS, INCLUDING A TRANSMISSION, CONVEYANCE, OR ROUTING IN WHICH
9 COMPUTER PROCESSING APPLICATIONS ARE USED TO ACT ON THE FORM, CODE,
10 OR PROTOCOL OF THE CONTENT FOR PURPOSES OF TRANSMISSION,
11 CONVEYANCE, OR ROUTING WITHOUT REGARD TO WHETHER THE SERVICE IS
12 REFERRED TO AS VOICE OVER INTERNET PROTOCOL SERVICES OR IS
13 CLASSIFIED BY THE FEDERAL COMMUNICATIONS COMMISSION AS ENHANCED OR
14 VALUE ADDED. TELECOMMUNICATIONS SERVICE DOES NOT INCLUDE ANY OF THE
15 FOLLOWING:

16 (i) DATA PROCESSING AND INFORMATION SERVICES THAT ALLOW DATA TO
17 BE GENERATED, ACQUIRED, STORED, PROCESSED, OR RETRIEVED AND
18 DELIVERED BY AN ELECTRONIC TRANSMISSION TO A PURCHASER IF THE
19 PURCHASER'S PRIMARY PURPOSE FOR THE UNDERLYING TRANSACTION IS THE
20 PROCESSED DATA OR INFORMATION.

21 (ii) INSTALLATION OR MAINTENANCE OF WIRING OR EQUIPMENT ON A
22 CUSTOMER'S PREMISES.

23 (iii) TANGIBLE PERSONAL PROPERTY.

24 (iv) ADVERTISING, INCLUDING, BUT NOT LIMITED TO, DIRECTORY
25 ADVERTISING.

26 (v) BILLING AND COLLECTION SERVICES PROVIDED TO THIRD PARTIES.

27 (vi) INTERNET ACCESS SERVICE.

1 (vii) RADIO AND TELEVISION AUDIO AND VIDEO PROGRAMMING
2 SERVICES, INCLUDING, BUT NOT LIMITED TO, CABLE SERVICE AS DEFINED
3 IN 47 USC 522(6) AND AUDIO AND VIDEO PROGRAMMING SERVICES DELIVERED
4 BY COMMERCIAL MOBILE RADIO SERVICE PROVIDERS, AS DEFINED IN 47 CFR
5 20.3, REGARDLESS OF THE MEDIUM, INCLUDING THE FURNISHING OF
6 TRANSMISSION, CONVEYANCE, AND ROUTING OF THOSE SERVICES BY THE
7 PROGRAMMING SERVICE PROVIDER.

8 (viii) ANCILLARY SERVICES.

9 (ix) ANSWERING SERVICES, IF THE PRIMARY PURPOSE OF THE
10 TRANSACTION IS THE ANSWERING SERVICE RATHER THAN MESSAGE
11 TRANSMISSION.

12 (x) DIGITAL PRODUCTS DELIVERED ELECTRONICALLY, INCLUDING, BUT
13 NOT LIMITED TO, SOFTWARE, MUSIC, VIDEO, READING MATERIALS, OR RING
14 TONES.

15 Sec. 4d. (1) The following are exempt from the tax under this
16 act:

17 (a) Sales of drugs for human use that can only be legally
18 dispensed by prescription or food or food ingredients, except
19 prepared food intended for immediate human consumption.

20 (b) The deposit on a returnable container for a beverage or
21 the deposit on a carton or case that is used for returnable
22 containers.

23 (c) Food or tangible personal property purchased under the
24 federal food stamp program or meals **SOLD BY A PERSON EXEMPT FROM**
25 **THE TAX UNDER THIS ACT** eligible to be purchased under the federal
26 food stamp program.

27 (d) Fruit or vegetable seeds and fruit or vegetable plants if

1 purchased at a place of business authorized to accept food stamps
2 by the food and nutrition service of the United States department
3 of agriculture or a place of business that has made a complete and
4 proper application for authorization to accept food stamps but has
5 been denied authorization and provides proof of denial to the
6 department of treasury.

7 (e) Live animals purchased with the intent to be slaughtered
8 for human consumption.

9 (2) Food or drink heated or cooled mechanically, electrically,
10 or by other artificial means to an average temperature above 75
11 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and
12 sold from a vending machine, except milk, nonalcoholic beverages in
13 a sealed container, and fresh fruit, is subject to the tax under
14 this act. The tax due under this act on the sale of food or drink
15 from a vending machine selling both taxable items and items exempt
16 under this subsection shall be calculated under this act after
17 December 31, 1994 based on 1 of the following as determined by the
18 taxpayer:

19 (a) Actual gross proceeds from sales at retail.

20 (b) Forty-five percent of proceeds from the sale of items
21 subject to tax under this act or exempt from the tax levied under
22 this act, other than from the sale of carbonated beverages.

23 (3) "Food and food ingredients" means substances, whether in
24 liquid, concentrated, solid, frozen, dried, or dehydrated form,
25 that are sold for ingestion or chewing by humans and are consumed
26 for their taste or nutritional value. Food and food ingredients do
27 not include alcoholic beverages and tobacco.

1 (4) "Prepared food" means the following:

2 (a) Food sold in a heated state or that is heated by the
3 seller.

4 (b) Two or more food ingredients mixed or combined by the
5 seller for sale as a single item.

6 (c) Food sold with eating utensils provided by the seller,
7 including knives, forks, spoons, glasses, cups, napkins, straws, or
8 plates, but not including a container or packaging used to
9 transport the food.

10 (5) Prepared food does not include the following:

11 (a) Food that is only cut, repackaged, or pasteurized by the
12 seller.

13 (b) Raw eggs, fish, meat, poultry, and foods containing those
14 raw items requiring cooking by the consumer in recommendations
15 contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001
16 food code published by the food and drug administration of the
17 public health service of the department of health and human
18 services, to prevent foodborne illness.

19 (c) Food sold in an unheated state by weight or volume as a
20 single item, without eating utensils.

21 (d) Bakery items, including bread, rolls, buns, biscuits,
22 bagels, croissants, pastries, doughnuts, danish, cakes, tortes,
23 pies, tarts, muffins, bars, cookies, and tortillas, sold without
24 eating utensils.

25 (6) "Prepared food intended for immediate consumption" means
26 prepared food.

27 Sec. 4i. (1) A seller required to collect the tax under this

1 act shall be exempt from collecting the tax on sales of tangible
2 personal property if the tangible personal property is part of a
3 drop shipment and if the taxpayer complies with the requirements of
4 subsection (3).

5 (2) As used in this section, "drop shipment" means the direct
6 delivery of tangible personal property to a purchaser in Michigan
7 by a person who has sold the property to another person not
8 licensed under this act but possessing a resale or exemption
9 certificate or other written evidence of exemption authorized by
10 another state, **OR ANY OTHER ACCEPTABLE INFORMATION EVIDENCING**
11 **QUALIFICATION FOR A RESALE EXEMPTION**, for resale to the Michigan
12 purchaser.

13 (3) For each transaction for which an exemption is claimed
14 under subsection (1), the taxpayer shall provide the following
15 information to the department annually in any reasonable form:

16 (a) The name, address, and, if readily available, the federal
17 taxpayer identification number of the person to whom the property
18 is sold for resale.

19 (b) The name, address, and, if readily available, the federal
20 taxpayer identification number of the person to whom the property
21 is shipped in Michigan.

22 (4) A person making a drop shipment is a seller.

23 Sec. 7. (1) Each person storing, using, or consuming in this
24 state tangible personal property or services is liable for the tax
25 levied under this act, and that liability shall not be extinguished
26 until the tax levied under this act has been paid to the
27 department.

1 (2) A person who acquires tangible personal property or
2 services for any tax-exempt use who subsequently converts the
3 tangible personal property or service to a taxable use, including
4 an interim taxable use, is liable for the tax levied under this
5 act. If tangible personal property or services are converted to a
6 taxable use, the tax levied under this act shall be imposed without
7 regard to any subsequent tax-exempt use. The payment to the
8 department of the tax, interest, and any penalty assessed by the
9 department relieves the seller, who sold the property or services
10 with regard to the storing, use, or consumption on which the tax
11 was paid from the payment of the amount of the tax that he or she
12 may be required under this act to collect from the purchaser.

13 (3) BEGINNING JANUARY 1, 2009, EXCEPT AS LIMITED BY SUBSECTION
14 (4), A CONSUMER IS RELIEVED FROM LIABILITY, INCLUDING LIABILITY FOR
15 TAX, PENALTY, AND INTEREST, FOR HAVING FAILED TO PAY THE CORRECT
16 AMOUNT OF TAX IMPOSED UNDER THIS ACT IN THE FOLLOWING
17 CIRCUMSTANCES:

18 (A) THE CONSUMER'S SELLER OR THE SELLER'S CERTIFIED SERVICE
19 PROVIDER, AS DEFINED IN THE STREAMLINED SALES AND USE TAX
20 ADMINISTRATION ACT, 2004 PA 174, MCL 205.801 TO 205.833, RELIED ON
21 ERRONEOUS DATA CONTAINED IN THE TAXABILITY MATRIX.

22 (B) THE CONSUMER RELIED ON ERRONEOUS DATA CONTAINED IN THE
23 TAXABILITY MATRIX.

24 (4) LIABILITY RELIEF UNDER SUBSECTION (3) IS LIMITED TO THE
25 ERRONEOUS CLASSIFICATION IN THE TAXABILITY MATRIX OF TERMS INCLUDED
26 IN THE STREAMLINED SALES AND USE TAX AGREEMENT'S LIBRARY OF
27 DEFINITIONS AS TAXABLE OR EXEMPT, INCLUDED IN SALES PRICE, EXCLUDED

1 FROM SALES PRICE, OR EXCLUDED FROM THE DEFINITION.

2 (5) AS USED IN THIS SECTION:

3 (A) "PENALTY" MEANS AN AMOUNT IMPOSED FOR NONCOMPLIANCE THAT
4 IS NOT FRAUDULENT, WILLFUL, OR INTENTIONAL AND THAT IS IN ADDITION
5 TO THE CORRECT AMOUNT OF TAX IMPOSED UNDER THIS ACT AND IN ADDITION
6 TO INTEREST.

7 (B) "TAXABILITY MATRIX" MEANS THE TAXABILITY MATRIX PUBLISHED
8 BY THE DEPARTMENT PURSUANT TO THE STREAMLINED SALES AND USE TAX
9 ADMINISTRATION ACT, 2004 PA 174, MCL 205.801 TO 205.833.

10 Sec. 13. (1) A purchaser of direct mail other than a holder of
11 a direct pay permit under section 8 shall provide to the seller at
12 the time of purchase either a ~~direct mail~~ **AN EXEMPTION** form as
13 prescribed by the department or information indicating the taxing
14 jurisdictions to which the direct mail is delivered to recipients.

15 (2) Upon receipt of the ~~direct mail~~ **EXEMPTION** form, the seller
16 is relieved of all obligation to collect, pay, or remit the
17 applicable tax and the purchaser is then obligated to pay the
18 applicable tax on a direct pay basis.

19 (3) A ~~direct mail~~ **AN EXEMPTION** form remains in effect for all
20 subsequent sales of direct mail by the seller to the purchaser
21 until revoked in writing.

22 (4) Upon receipt of information from the purchaser indicating
23 the taxing jurisdictions to which the direct mail is delivered to
24 recipients, the seller shall collect the tax according to that
25 delivery information. In the absence of bad faith, the seller is
26 relieved of any further obligation to collect the tax if the seller
27 collected the tax using the delivery information provided by the

1 purchaser.

2 (5) If the purchaser does not have a direct pay permit and
3 does not provide the seller with a ~~direct mail~~-**AN EXEMPTION** form or
4 delivery information as required in subsection (1), the seller
5 shall collect the tax in the same manner as provided in section 19.
6 Nothing in this subsection limits a purchaser's obligation for the
7 tax under this act.

8 (6) A purchaser who provides the seller with documentation of
9 a direct pay permit is not required to provide a ~~direct mail~~-**AN**
10 **EXEMPTION** form or delivery information.

11 Sec. 14a. (1) A person in the business of selling tangible
12 personal property and liable for any tax under this act shall keep
13 accurate and complete beginning and annual inventory and purchase
14 records of additions to inventory, complete daily sales records,
15 receipts, invoices, bills of lading, and all pertinent documents in
16 a form the department requires. If an exemption from use tax is
17 claimed by a person because the sale is for resale at retail, a
18 record shall be kept of the sales tax license number if the person
19 has a sales tax license. These records shall be retained for a
20 period of 4 years after the tax imposed under this act to which the
21 records apply is due or as otherwise provided by law.

22 (2) If the department considers it necessary, the department
23 may require a person, by notice served upon that person, to make a
24 return, render under oath certain statements, or keep certain
25 records the department considers sufficient to show whether or not
26 that person is liable for the tax under this act.

27 (3) A person knowingly making a sale of tangible personal

1 property for the purpose of resale at retail to another person not
2 licensed under this act is liable for the tax imposed under this
3 act unless the transaction is exempt under the provisions of
4 section 4i.

5 (4) If a taxpayer fails to file a return or to maintain or
6 preserve proper records as prescribed in this section, or the
7 department has reason to believe that any records maintained or
8 returns filed are inaccurate or incomplete and that additional
9 taxes are due, the department may assess the amount of the tax due
10 from the taxpayer based on information that is available or that
11 may become available to the department. That assessment is
12 considered prima facie correct for the purpose of this act and the
13 burden of proof of refuting the assessment is upon the taxpayer.

14 (5) For purposes of this act, exemption certificate includes a
15 blanket exemption certificate on a form prescribed by the
16 department that covers all exempt transfers between the taxpayer
17 and the buyer for a period of 4 years or for a period of less than
18 4 years as stated on the blanket exemption certificate if that
19 period is agreed to by the buyer and taxpayer.

20 ~~—— (6) This section applies when this state is a member state of~~
21 ~~the streamlined sales and use tax agreement.~~

22 Sec. 14b. (1) If an exemption from the tax under this act is
23 claimed, the seller shall obtain identifying information of the
24 purchaser and the reason for claiming the exemption at the time of
25 the purchase or at a later date. The seller shall obtain the same
26 information for a claimed exemption regardless of the medium in
27 which the transaction occurred.

1 (2) A seller shall use a standard format for claiming an
2 exemption electronically as adopted by the governing board under
3 the streamlined sales and use tax agreement.

4 (3) A purchaser is not required to provide a signature to
5 claim an exemption under this act unless a paper exemption form is
6 used.

7 (4) A seller shall maintain a proper record of all exempt
8 transactions and shall provide them when requested by the
9 department.

10 (5) A seller who complies with the requirements of this
11 section is not liable for the tax under this act if a purchaser
12 improperly claims an exemption. A purchaser who improperly claims
13 an exemption is liable for the tax due under this act. This
14 subsection does not apply if a seller ~~fraudulently~~ **DOES ANY OF THE**
15 **FOLLOWING:**

16 (A) **FRAUDULENTLY** fails to collect the tax. ~~or solicits~~

17 (B) **SOLICITS** a purchaser to make an improper claim for
18 exemption.

19 (C) **ACCEPTS AN EXEMPTION FORM WHEN THE PURCHASER CLAIMS AN**
20 **ENTITY-BASED EXEMPTION IF BOTH OF THE FOLLOWING OCCUR:**

21 (i) **THE SUBJECT OF THE TRANSACTION SOUGHT TO BE COVERED BY THE**
22 **EXEMPTION FORM IS ACTUALLY RECEIVED BY THE PURCHASER AT A LOCATION**
23 **OPERATED BY THE SELLER.**

24 (ii) **THE STATE IN WHICH THE LOCATION OPERATED BY THE SELLER IS**
25 **LOCATED PROVIDES AN EXEMPTION FORM THAT CLEARLY AND AFFIRMATIVELY**
26 **INDICATES THAT THE CLAIMED EXEMPTION IS NOT AVAILABLE IN THAT**
27 **STATE.**

1 (6) A SELLER WHO OBTAINS A FULLY COMPLETED EXEMPTION FORM OR
2 CAPTURES THE RELEVANT DATA ELEMENTS AS OUTLINED IN THIS SECTION
3 WITHIN 90 DAYS AFTER THE DATE OF SALE IS NOT LIABLE FOR THE TAX
4 UNDER THIS ACT.

5 (7) IF THE SELLER HAS NOT OBTAINED AN EXEMPTION FORM OR ALL
6 RELEVANT DATA ELEMENTS, THE SELLER MAY, WITHIN 120 DAYS AFTER A
7 REQUEST FOR SUBSTANTIATION BY THE DEPARTMENT, EITHER PROVE THAT THE
8 TRANSACTION WAS NOT SUBJECT TO THE TAX UNDER THIS ACT BY OTHER
9 MEANS OR OBTAIN A FULLY COMPLETED EXEMPTION FORM FROM THE
10 PURCHASER, TAKEN IN GOOD FAITH. THE DEPARTMENT MAY, IN ITS
11 DISCRETION, ALLOW A SELLER ADDITIONAL TIME TO COMPLY WITH THIS
12 SUBSECTION.

13 (8) A SELLER IS NOT LIABLE FOR THE TAX UNDER THIS ACT IF THE
14 SELLER OBTAINS A BLANKET EXEMPTION FORM FOR A PURCHASER WITH WHICH
15 THE SELLER HAS A RECURRING BUSINESS RELATIONSHIP. RENEWALS OF
16 BLANKET EXEMPTION FORMS OR UPDATES OF EXEMPTION FORM INFORMATION OR
17 DATA ELEMENTS ARE NOT REQUIRED IF THERE IS A RECURRING BUSINESS
18 RELATIONSHIP BETWEEN THE SELLER AND THE PURCHASER. FOR PURPOSES OF
19 THIS SECTION, A RECURRING BUSINESS RELATIONSHIP EXISTS WHEN A
20 PERIOD OF NOT MORE THAN 12 MONTHS ELAPSES BETWEEN SALES
21 TRANSACTIONS.

22 Enacting section 1. Sections 12 and 14 of the use tax act,
23 1937 PA 94, MCL 205.102 and 205.104, are repealed.