

# SENATE BILL No. 887

March 6, 2018, Introduced by Senators BRANDENBURG, ROBERTSON, EMMONS, KOWALL, COLBECK, HUNE, BOOHER, PAVLOV, ROCCA, KNOLLENBERG, HANSEN, MARLEAU, PROOS, CASPERSON, SCHMIDT, MACGREGOR, SCHUITMAKER, O'BRIEN and ZORN and referred to the Committee on Finance.

A bill to amend 1937 PA 94, entitled  
"Use tax act,"  
by amending section 2 (MCL 205.92), as amended by 2018 PA 1.

**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.

10           (b) "Use" means the exercise of a right or power over tangible

1 personal property incident to the ownership of that property  
2 including transfer of the property in a transaction where  
3 possession is given. Converting tangible personal property acquired  
4 for a use exempt from the tax levied under this act to a use not  
5 exempt from the tax levied under this act is a taxable use. **A**  
6 **PERSON ENGAGED IN THE BUSINESS OF CONSTRUCTING, ALTERING,**  
7 **REPAIRING, OR IMPROVING REAL ESTATE FOR OTHERS THAT ACQUIRES**  
8 **TANGIBLE PERSONAL PROPERTY THAT IS PURCHASED BY ANOTHER PERSON FOR**  
9 **THE SOLE PURPOSE OF AFFIXING THAT TANGIBLE PERSONAL PROPERTY TO AND**  
10 **MAKING IT A STRUCTURAL PART OF REAL ESTATE FOR THAT SAME PERSON IS**  
11 **PROVIDING A SERVICE AND IT IS NOT A TAXABLE USE.**

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

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

1 as the seller for the purpose of this act.

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

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

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

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

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

26 (A) An amount received or billed by the taxpayer for  
27 remittance to the employee as a gratuity or tip, if the gratuity or

1 tip is separately identified and itemized on the guest check or  
2 billed to the customer.

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

6 (iv) Delivery charges incurred or to be incurred before the  
7 completion of the transfer of ownership of tangible personal  
8 property subject to the tax levied under this act from the seller  
9 to the purchaser.

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

13 (vi) Except as otherwise provided in subparagraphs (xi),  
14 (xii), and (xiv), credit for any trade-in.

15 (vii) Except as otherwise provided in subparagraph (x),  
16 consideration received by the seller from third parties if all of  
17 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) 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) Any taxes legally imposed directly on the consumer that  
20 are separately stated on the invoice, bill of sale, or similar  
21 document given to the purchaser.

22 (x) Beginning January 1, 2000, employee discounts that are  
23 reimbursed by a third party on sales of motor vehicles.

24 (xi) Beginning November 15, 2013, credit for the agreed-upon  
25 value of a titled watercraft used as part payment of the purchase  
26 price of a new titled watercraft or used titled watercraft  
27 purchased from a watercraft dealer if the agreed-upon value is

1 separately stated on the invoice, bill of sale, or similar document  
2 given to the purchaser. This subparagraph does not apply to leases  
3 or rentals.

4 (xii) Beginning December 15, 2013, credit for the agreed-upon  
5 value of a motor vehicle or recreational vehicle used as part  
6 payment of the purchase price of a new motor vehicle or used motor  
7 vehicle or recreational vehicle purchased from a dealer if the  
8 agreed-upon value is separately stated on the invoice, bill of  
9 sale, or similar document given to the purchaser. This subparagraph  
10 does not apply to leases or rentals. Except as otherwise provided  
11 under subparagraph (xiv), for purposes of this subparagraph, the  
12 agreed-upon value of a motor vehicle or recreational vehicle used  
13 as part payment shall be limited as follows:

14 (A) Beginning December 15, 2013, subject to sub-subparagraphs  
15 (B) and (C), the lesser of the following:

16 (I) \$2,000.00.

17 (II) The agreed-upon value of the motor vehicle or  
18 recreational vehicle used as part payment.

19 (B) Beginning January 1, 2015 and each January 1 thereafter  
20 through December 31, 2018, the amount under sub-subparagraph (A) (I)  
21 shall be increased by an additional \$500.00 each year.

22 (C) Beginning January 1, 2019, subject to sub-subparagraphs  
23 (D) and (E), the lesser of the following:

24 (I) \$5,000.00.

25 (II) The agreed-upon value of the motor vehicle used as part  
26 payment.

27 (D) Beginning January 1, 2020 and each January 1 thereafter,

1 the amount under sub-subparagraph (C) (I) shall be increased by an  
2 additional \$1,000.00 each year.

3 (E) Beginning on January 1, in the year in which the amount  
4 under sub-subparagraph (C) (I) exceeds \$14,000.00 and each January 1  
5 thereafter, there shall be no limitation on the agreed-upon value  
6 of the motor vehicle used as part payment.

7 (xiii) Beginning January 1, 2017, credit for the core charge  
8 attributable to a recycling fee, deposit, or disposal fee for a  
9 motor vehicle or recreational vehicle part or battery if the  
10 recycling fee, deposit, or disposal fee is separately stated on the  
11 invoice, bill of sale, or similar document given to the purchaser.

12 (xiv) Beginning January 1, 2018, credit for the agreed-upon  
13 value of a recreational vehicle used as part payment of the  
14 purchase price of a recreational vehicle purchased from a dealer if  
15 the agreed-upon value is separately stated on the invoice, bill of  
16 sale, or similar document given to the purchaser. This subparagraph  
17 does not apply to leases or rentals.

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

22 (i) A person acquiring tangible personal property if engaged  
23 in the business of constructing, altering, repairing, or improving  
24 the real estate of others.

25 (ii) A person who has converted tangible personal property or  
26 services acquired for storage, use, or consumption in this state  
27 that is exempt from the tax levied under this act to storage, use,

1 or consumption in this state that is not exempt from the tax levied  
2 under this act.

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

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

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

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

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

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

24 (n) "Qualified commercial motor vehicle" means that term as  
25 defined in section 1(l), (m), and (n) of the motor carrier fuel tax  
26 act, 1980 PA 119, MCL 207.211.

27 (o) "Diesel fuel" means that term as defined in section 2(q)



1 of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

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

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

14 (r) "New motor vehicle" means that term as defined in section  
15 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

16 (s) "Recreational vehicle" means that term as defined in  
17 section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

18 (t) "Dealer" means that term as defined in section 11 of the  
19 Michigan vehicle code, 1949 PA 300, MCL 257.11.

20 (u) "Watercraft dealer" means a dealer as that term is defined  
21 in section 80102 of the natural resources and environmental  
22 protection act, 1994 PA 451, MCL 324.80102.