

HOUSE BILL NO. 5571

November 30, 2021, Introduced by Reps. Beeler, Steven Johnson, Eisen, Markkanen, Martin, Allor, Borton and Bellino and referred to the Committee on Tax Policy.

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

1 plural as well as the singular number, unless the intention to give
2 a more limited meaning is disclosed by the context.

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

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

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

27 (e) "Purchase" means to acquire for a consideration, whether
28 the acquisition is effected by a transfer of title, of possession,
29 or of both, or a license to use or consume; whether the transfer is

1 absolute or conditional, and by whatever means the transfer is
2 effected; and whether consideration is a price or rental in money,
3 or by way of exchange or barter. Purchase includes converting
4 tangible personal property acquired for a use exempt from the tax
5 levied under this act to a use not exempt from the tax levied under
6 this act.

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

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

16 (ii) Cost of materials used, labor or service cost, interest,
17 losses, costs of transportation to the seller, taxes imposed on the
18 seller other than taxes imposed by this act, and any other expense
19 of the seller.

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

22 (A) An amount received or billed by the taxpayer for
23 remittance to the employee as a gratuity or tip, if the gratuity or
24 tip is separately identified and itemized on the guest check or
25 billed to the customer.

26 (B) Labor or service charges involved in maintenance and
27 repair work on tangible personal property of others if separately
28 itemized.

29 (iv) Delivery charges incurred or to be incurred before the

1 completion of the transfer of ownership of tangible personal
2 property subject to the tax levied under this act from the seller
3 to the purchaser.

4 (v) Installation charges incurred or to be incurred before the
5 completion of the transfer of ownership of tangible personal
6 property from the seller to the purchaser.

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

9 (vii) Except as otherwise provided in subparagraph (x),
10 consideration received by the seller from third parties if all of
11 the following conditions are met:

12 (A) The seller actually receives consideration from a party
13 other than the purchaser and the consideration is directly related
14 to a price reduction or discount on the sale.

15 (B) The seller has an obligation to pass the price reduction
16 or discount through to the purchaser.

17 (C) The amount of the consideration attributable to the sale
18 is fixed and determinable by the seller at the time of the sale of
19 the item to the purchaser.

20 (D) One of the following criteria is met:

21 (I) The purchaser presents a coupon, certificate, or other
22 documentation to the seller to claim a price reduction or discount
23 where the coupon, certificate, or documentation is authorized,
24 distributed, or granted by a third party with the understanding
25 that the third party will reimburse any seller to whom the coupon,
26 certificate, or documentation is presented.

27 (II) The purchaser identifies himself or herself to the seller
28 as a member of a group or organization entitled to a price
29 reduction or discount. A preferred customer card that is available

1 to any patron does not constitute membership in a group or
2 organization.

3 (III) The price reduction or discount is identified as a third
4 party price reduction or discount on the invoice received by the
5 purchaser or on a coupon, certificate, or other documentation
6 presented by the purchaser.

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

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

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

16 (xi) Beginning November 15, 2013, credit for the agreed-upon
17 value of a titled watercraft used as part payment of the purchase
18 price of a new titled watercraft or used titled watercraft
19 purchased from a watercraft dealer if the agreed-upon value is
20 separately stated on the invoice, bill of sale, or similar document
21 given to the purchaser. This subparagraph does not apply to leases
22 or rentals.

23 (xii) Beginning December 15, 2013, credit for the agreed-upon
24 value of a motor vehicle or recreational vehicle used as part
25 payment of the purchase price of a new motor vehicle or used motor
26 vehicle or recreational vehicle purchased from a dealer if the
27 agreed-upon value is separately stated on the invoice, bill of
28 sale, or similar document given to the purchaser. This subparagraph
29 does not apply to leases or rentals. Except as otherwise provided

1 under subparagraph (xiv), for purposes of this subparagraph, the
2 agreed-upon value of a motor vehicle or recreational vehicle used
3 as part payment ~~shall be~~ **is** limited as follows:

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

6 (I) \$2,000.00.

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

9 (B) Beginning January 1, 2015 and each January 1 thereafter
10 through December 31, 2018, the amount under sub-subparagraph (A)(I)
11 ~~shall be~~ **is** increased by an additional \$500.00 each year.

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

14 (I) \$5,000.00.

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

17 (D) Beginning January 1, 2020 and each January 1 thereafter,
18 the amount under sub-subparagraph (C)(I) ~~shall be~~ **is** increased by
19 an additional \$1,000.00 each year.

20 (E) Beginning on January 1, in the year in which the amount
21 under sub-subparagraph (C)(I) exceeds \$14,000.00 and each January 1
22 thereafter, there ~~shall be~~ **is** no limitation on the agreed-upon
23 value of the motor vehicle used as part payment.

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

29 (xiv) Beginning January 1, 2018, credit for the agreed-upon

1 value of a recreational vehicle used as part payment of the
2 purchase price of a recreational vehicle purchased from a dealer if
3 the agreed-upon value is separately stated on the invoice, bill of
4 sale, or similar document given to the purchaser. This subparagraph
5 does not apply to leases or rentals.

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

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

13 (ii) A person who has converted tangible personal property or
14 services acquired for storage, use, or consumption in this state
15 that is exempt from the tax levied under this act to storage, use,
16 or consumption in this state that is not exempt from the tax levied
17 under this act.

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

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

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

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

28 (l) "Textiles" means goods that are made of or incorporate
29 woven or nonwoven fabric, including, but not limited to, clothing,

1 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,
2 pillows, pillowcases, tablecloths, napkins, aprons, linens, floor
3 mops, floor mats, and thread. Textiles also include materials used
4 to repair or construct textiles, or other goods used in the rental,
5 sale, or cleaning of textiles.

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

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

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

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

18 (q) "Convert" means putting a service or tangible personal
19 property acquired for a use exempt from the tax levied under this
20 act at the time of acquisition to a use that is not exempt from the
21 tax levied under this act, whether the use is in whole or in part,
22 or permanent or not permanent. A motor vehicle purchased for resale
23 by a new vehicle dealer licensed under section 248(8)(a) of the
24 Michigan vehicle code, 1949 PA 300, MCL 257.248, and not titled in
25 the name of the dealer ~~shall is~~ not ~~be~~ considered to be converted
26 ~~prior to~~ **before** sale or lease by that dealer.

27 (r) "New motor vehicle" means that term as defined in section
28 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

29 (s) "Recreational vehicle" means that term as defined in

1 section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

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

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

7 Enacting section 1. This amendatory act does not take effect
8 unless Senate Bill No. _____ or House Bill No. 5570 (request no.
9 04203'21) of the 101st Legislature is enacted into law.