

STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007

Introduced by Rep. Tobocman

ENROLLED HOUSE BILL No. 5198

AN ACT to amend 1937 PA 94, entitled "An act to provide for the levy, assessment and collection of a specific excise tax on the storage, use or consumption in this state of tangible personal property and certain services; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending the title and sections 3a and 5 (MCL 205.93a and 205.95), sections 3a and 5 as amended by 2004 PA 172, and by adding section 3d.

The People of the State of Michigan enact:

TITLE

An act to provide for the levy, assessment, and collection of a specific excise tax on the storage, use, or consumption in this state of tangible personal property and certain services; to appropriate the proceeds of that tax; to prescribe penalties; and to make appropriations.

Sec. 3a. (1) The use or consumption of the following services is taxed under this act in the same manner as tangible personal property is taxed under this act:

(a) Except as provided in section 3b, intrastate telephone, telegraph, leased wire, and other similar communications, including local telephone exchange and long distance telephone service that both originates and terminates in this state, and telegraph, private line, and teletypewriter service between places in this state, but excluding telephone service by coin-operated installations, switchboards, concentrator-identifiers, interoffice circuitry and their accessories for telephone answering service, and directory advertising proceeds.

(b) Rooms or lodging furnished by hotelkeepers, motel operators, and other persons furnishing accommodations that are available to the public on the basis of a commercial and business enterprise, irrespective of whether or not membership is required for use of the accommodations, except rooms and lodging rented for a continuous period of more than 1 month. As used in this act, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, nudist camps, apartment hotels, resort lodges and cabins, camps operated by other than nonprofit organizations but not including those licensed under 1973 PA 116, MCL722.111 to 722.128, and any other building or group of buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than 1 month and accommodations furnished by hospitals or nursing homes.

(c) Except as provided in section 3b, interstate telephone communications that either originate or terminate in this state and for which the charge for the service is billed to a service address in this state or phone number by the provider either within or outside this state including calls between this state and any place within or without the United States of America outside of this state. This subdivision does not apply to a wide area telecommunication service or a similar type service, an 800 prefix service or similar type service, an interstate private network and related usage charges, or an international call either inbound or outbound.

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

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

(f) For a manufacturer who affixes its product to real estate and maintains an inventory of its product that is available for sale to others by publication or price list, the direct production costs and indirect production costs of the product affixed to the real estate that are incident to and necessary for production or manufacturing operations or processes, as defined by the department.

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

(2) If charges for intrastate telecommunications services or telecommunications services between this state and another state and other billed services not subject to the tax under this act are aggregated with and not separately stated from charges for telecommunications services that are subject to the tax under this act, the nontaxable telecommunications services and other nontaxable billed services are subject to the tax under this act unless the service provider can reasonably identify charges for telecommunications services not subject to the tax under this act from its books and records that are kept in the regular course of business.

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

(4) As used in this section:

- (a) "Fabricate" means to modify or prepare tangible personal property for affixation or assembly.
- (b) "Manufacture" means to convert or condition tangible personal property by changing the form, composition, quality, combination, or character of the property.
- (c) "Manufacturer" means a person who manufactures, fabricates, or assembles tangible personal property.

Sec. 3d. (1) The use or consumption of the following services is taxed under this act in the same manner as tangible personal property is taxed under this act:

- (a) Carpet and upholstery cleaning services, as described in NAICS industry code 56174.
- (b) Business service center services, as described in NAICS industry code 56143.
- (c) Consulting services, as described in NAICS subsector code 5416.
- (d) Investigation, guard and armored car services, as described in NAICS industry code 56161.
- (e) Investment advice services, as described in NAICS industry code 52393.
- (f) Janitorial services, as described in NAICS industry code 56172.
- (g) Landscaping services, as described in NAICS industry code 56173.
- (h) Office administration services, as described in NAICS subsector code 5611.
- (i) All of the following personal services:
 - (i) Astrology services.
 - (ii) Baby shoe bronzing services.
 - (iii) Bail bonding services.
 - (iv) Balloon-o-gram services.
 - (v) Coin-operated blood pressure testing machine services.
 - (vi) Bondsperson services.
 - (vii) Check room services.
 - (viii) Coin-operated personal service machine services.

- (ix)* Comfort station operation services.
- (x)* Concierge services.
- (xi)* Consumer buying services.
- (xii)* Credit card notification services.
- (xiii)* Dating services.
- (xiv)* Discount buying services.
- (xv)* Social escort services.
- (xvi)* Fortune-telling services.
- (xvii)* Genealogical investigation services.
- (xviii)* House sitting services.
- (xix)* Social introduction services.
- (xx)* Coin-operated rental locker services.
- (xxi)* Numerology services.
- (xxii)* Palm reading services.
- (xxiii)* Party planning services.
- (xxiv)* Pay telephone services.
- (xxv)* Personal fitness trainer services.
- (xxvi)* Personal shopping services.
- (xxvii)* Coin-operated photographic machine services.
- (xxviii)* Phrenology services.
- (xxix)* Porter services.
- (xxx)* Psychic services.

(xxx) Rest room operation services.

(xxxi) Shoeshine services.

(xxxiii) Singing telegram services.

(xxxiv) Wedding chapel services, but not churches.

(xxxv) Wedding planning services.

(j) Other travel and reservation services, as described in NAICS industry code 56159.

(k) Scenic transportation services, as described in NAICS subsector code 487.

(l) Skiing services, as described in NAICS industry code 71392.

(m) Tour operator services, as described in NAICS industry code 56152.

(n) Warehousing and storage services, as described in NAICS subsector code 4931.

(o) Packaging and labeling services, as described in NAICS industry code 56191.

(p) Specialized design services, as described in NAICS industry group code 5414.

(q) Transit and ground passenger transport services, as described in NAICS industry group code 4853.

(r) Courier and messenger services, as described in NAICS subsector code 492.

(s) Personal care services, as described in NAICS industry group code 8121, except hair care services.

(t) Service contract services in which the seller, in exchange for the buyer's single payment, agrees to provide repair, maintenance, or replacement of 1 or more items of tangible personal property during a specific period of time, which services the buyer is not required to buy in connection with the purchase of tangible personal property.

(u) Security system services, as described in NAICS industry code 56162.

(v) Document preparation services, as described in NAICS industry code 56141.

(w) Miniwarehouse services and self-storage unit services, as described in NAICS industry code 53113.

(2) A service is subject to tax under this section based on the description of that service in the applicable NAICScode and not the classification of the establishment providing that service.

(3) There is appropriated to the department of treasury for the 2006-2007 state fiscal year the sum of \$100,000.00 to begin implementing the requirements of the amendatory act that added this section. Any portion of this amount under this section that is not expended in the 2006-2007 state fiscal year shall not lapse to the general fund but shall be carried forward in a work project account that is in compliance with section 451a of the management and budget act, 1984 PA431, MCL 18.1451a, for the following state fiscal year.

(4) The services set forth in subsection (1) shall be sourced as products as provided in section 20.

(5) As used in this section, "NAICS" means North American industry classification system, 2002 as produced by the United States office of management and budget.

Sec. 5. (1) Except as otherwise provided in this subsection or subsection (5), a person subject to the tax under this act shall register with the department and give the name and address of each agent operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, and any other information that the department requires relevant to the enforcement of this act. However, a seller holding a sales tax license obtained under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, is not required to separately register with the department under this act. Every person subject to the tax under this act shall source sales in accordance with section 20 and collect the tax imposed by this act from the consumer.

(2) The corporation, securities, and land development bureau of the department of labor and economic growth shall not issue to any foreign corporation subject to the tax under this act a certificate of authority to do business in this state or approve and file the proposed articles of incorporation submitted to it by any domestic corporation authorizing or permitting that corporation to conduct any business subject to the tax under this act unless the corporation submits with the application for the certificate of authority or proposed articles of incorporation an application for registration of the corporation under this act or an application for a sales tax license under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78. The application shall be transmitted to the department by the corporation, securities, and land development bureau.

(3) A domestic corporation or a foreign corporation authorized to transact business in this state that submits a certificate of dissolution or requests a certificate of withdrawal from this state shall request a certificate from the department stating that taxes are not due under section 27a of 1941 PA 122, MCL 205.27a, not more than 60 days after submitting the certificate of dissolution or requesting the certificate of withdrawal. A corporation that does not request a certificate stating that taxes are not due is subject to the same penalties under section 24 of 1941 PA 122, MCL 205.24, that a taxpayer would be subject to for failure to file a return.

(4) A lessor may elect to pay use tax on receipts from the rental or lease of the tangible personal property in lieu of payment of sales or use tax on the full cost of the property at the time it is acquired. For tax years that begin after December 31, 2001, in order to make a valid election under this subsection, a lessor of tangible personal property that is an aircraft shall obtain a use tax registration by the earlier of the date set for the first payment of use tax under the lease or rental agreement or 90 days after the lessor first brings the aircraft into this state.

(5) A seller registered under the streamlined sales and use tax agreement who is not otherwise subject to

the tax under this act is not required to register under this section because of the registration under the streamlined sales and use tax agreement.

Enacting section 1. This amendatory act takes effect December 1, 2007.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 1.
- (b) Senate Bill No. 395.
- (c) Senate Bill No. 396.
- (d) Senate Bill No. 397.
- (e) Senate Bill No. 398.
- (f) Senate Bill No. 418.
- (g) Senate Bill No. 419.
- (h) Senate Bill No. 420.
- (i) Senate Bill No. 421.
- (j) Senate Bill No. 546.
- (k) Senate Bill No. 547.
- (l) Senate Bill No. 549.
- (m) Senate Bill No. 622.
- (n) Senate Bill No. 632.
- (o) House Bill No. 4800.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor