

**SUBSTITUTE FOR  
HOUSE BILL NO. 5433**

A bill to amend 1937 PA 94, entitled  
"Use tax act,"  
by amending sections 2 and 4a (MCL 205.92 and 205.94a), section 2  
as amended by 2023 PA 94 and section 4a as amended by 2004 PA 172.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 2. (1) 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, a  
7 county, or any other group or combination acting as a unit, and  
8 **includes** the plural as well as the singular number, unless the



1 intention to give a more limited meaning is disclosed by the  
2 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 the person obtains tangible personal property or services sold by  
20 the person for storage, use, or other consumption in this state,  
21 irrespective of whether or not the person is making the sales on  
22 the person's own behalf or on behalf of the dealer, distributor,  
23 supervisor, or employer, the department may so consider the person,  
24 and may consider the dealer, distributor, supervisor, or employer  
25 as the seller for the purpose of this act.

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



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

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

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

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

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

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

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

27 (iv) Except as otherwise provided in subparagraph (xv),  
28 delivery charges. A seller is not liable under this act for  
29 delivery charges allocated to the delivery of exempt property.

1 (v) Except as otherwise provided in subparagraph (xv),  
2 installation charges.

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

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

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

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

13 (C) The amount of the consideration attributable to the sale  
14 is fixed and determinable by the seller at the time of the sale of  
15 the item to the purchaser.

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

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

23 (II) The purchaser identifies himself or herself to the seller  
24 as a member of a group or organization entitled to a price  
25 reduction or discount. A preferred customer card that is available  
26 to any patron does not constitute membership in a group or  
27 organization.

28 (III) The price reduction or discount is identified as a third  
29 party price reduction or discount on the invoice received by the

1 purchaser or on a coupon, certificate, or other documentation  
2 presented by the purchaser.

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

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

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

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

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

29 (A) Beginning December 15, 2013, subject to sub-subparagraphs



1 (B) and (C), the lesser of the following:

2 (I) \$2,000.00.

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

5 (B) Beginning January 1, 2015 and each January 1 thereafter  
6 through December 31, 2018, the amount under sub-subparagraph (A) (I)  
7 is increased by an additional \$500.00 each year.

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

10 (I) \$5,000.00.

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

13 (D) Beginning January 1, 2020 and each January 1 thereafter,  
14 the amount under sub-subparagraph (C) (I) is increased by an  
15 additional \$1,000.00 each year.

16 (E) Beginning on January 1, in the year in which the amount  
17 under sub-subparagraph (C) (I) exceeds \$14,000.00 and each January 1  
18 thereafter, there is no limitation on the agreed-upon value of the  
19 motor vehicle used as part payment.

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

25 (xiv) Beginning January 1, 2018, credit for the agreed-upon  
26 value of a recreational vehicle used as part payment of the  
27 purchase price of a recreational vehicle purchased from a dealer if  
28 the agreed-upon value is separately stated on the invoice, bill of  
29 sale, or similar document given to the purchaser. This subparagraph



1 does not apply to leases or rentals.

2 (xv) Delivery or installation charges if such charges are  
3 separately stated on the invoice, bill of sale, or similar document  
4 provided to the purchaser, and the taxpayer maintains its books and  
5 records to show separately the transactions used to determine the  
6 tax levied by this act. This subdivision does not apply to delivery  
7 or installation charges involving or relating to the sale of  
8 electricity, natural gas, or artificial gas by a utility.

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

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

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

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

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

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

27 (k) "Tangible personal property" means personal property that  
28 can be seen, weighed, measured, felt, or touched or that is in any  
29 other manner perceptible to the senses and includes electricity,



1 water, gas, steam, and prewritten computer software.

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

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

13 (n) "Qualified commercial motor vehicle" means that term as  
14 defined in section 1 ~~(l), (m), and (n)~~<sup>1</sup> of the motor carrier fuel  
15 tax act, 1980 PA 119, MCL 207.211.

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

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

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



1 (r) "New motor vehicle" means that term as defined in section  
2 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

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

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

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

10 (v) "Utility" means either of the following:

11 (i) A person regulated by the Michigan public service  
12 commission as a utility.

13 (ii) A person that operates equipment or facilities for  
14 producing, generating, transmitting, delivering, or furnishing  
15 electricity within this state for the public for compensation,  
16 regardless of the person's owner, ownership structure, or  
17 regulation by the Michigan public service commission.

18 (2) Notwithstanding anything to the contrary in this act, the  
19 following applies only to delivery and installation charges  
20 described in subsection (1)(f)(iv) or (v), except that this  
21 subsection does not apply to delivery and installation charges  
22 involving or relating to the sale of electricity, natural gas, or  
23 artificial gas by a utility:

24 (a) Not later than July 25, 2023, the department shall cancel  
25 all outstanding balances related to such delivery and installation  
26 charges on notices of intent to assess that were issued under  
27 section 21 of 1941 PA 122, MCL 205.21, for the tax levied under  
28 this act and that were issued before April 26, 2023.

29 (b) Not later than July 25, 2023, the department shall cancel



1 all outstanding balances related to such delivery and installation  
2 charges on final assessments that were issued under section 22 of  
3 1941 PA 122, MCL 205.22, for the tax levied under this act, and  
4 that were issued before April 26, 2023.

5 (c) Beginning April 26, 2023, the department shall not issue  
6 any new assessments for the tax levied under this act on such  
7 delivery and installation charges for any tax period before April  
8 26, 2023, that is open under the statute of limitations provided in  
9 section 27a of 1941 PA 122, MCL 205.27a.

10 Sec. 4a. The following are exempt from the tax under this act:

11 (a) Rental receipts if the tangible personal property rented  
12 or leased was previously subject to 1 of the following when  
13 purchased by the lessor:

14 (i) This act.

15 (ii) The general sales tax act, 1933 PA 167, MCL 205.51 to  
16 205.78.

17 (b) Rental receipts if the tangible personal property rented  
18 or leased was previously taxed under a sales or use tax act of  
19 another state or a political subdivision of another state levied at  
20 a rate of 6% or more.

21 (c) Specific charges for technical support or for adapting or  
22 modifying prewritten computer software programs to a purchaser's  
23 needs or equipment if those charges are separately stated and  
24 identified.

25 (d) The sale of computer software originally designed for the  
26 exclusive use and special needs of the purchaser.

27 (e) The sale of a commercial advertising element if the  
28 commercial advertising element is used to create or develop a  
29 print, radio, television, or other advertisement, the commercial



1 advertising element is discarded or returned to the provider after  
2 the advertising message is completed, and the commercial  
3 advertising element is custom developed by the provider for the  
4 purchaser. As used in this subdivision, "commercial advertising  
5 element" means a negative or positive photographic image, an  
6 audiotape or videotape master, a layout, a manuscript, writing of  
7 copy, a design, artwork, an illustration, retouching, and  
8 mechanical or keyline instructions. This exemption does not include  
9 black and white or full color process separation elements, an  
10 audiotape reproduction, or a videotape reproduction.

11 (f) The sale of oxygen for human use dispensed pursuant to a  
12 prescription.

13 (g) The sale of insulin for human use.

14 (h) A meal provided free of charge or at a reduced rate to an  
15 employee during work hours by a food service establishment licensed  
16 by the department of agriculture.

17 (i) The sale of diesel fuel to a person who is an interstate  
18 motor carrier for use in a qualified commercial motor vehicle.

19 **(j) The use or consumption of electric fuel to propel a motor**  
20 **vehicle if that use or consumption is taxed under either the motor**  
21 **carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234, or the**  
22 **motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170. As used**  
23 **in this subdivision, "electric fuel" means that term as defined in**  
24 **section 157 of the motor fuel tax act, 2000 PA 403, MCL 207.1157.**

25 Enacting section 1. This amendatory act does not take effect  
26 unless all of the following bills of the 103rd Legislature are  
27 enacted into law:

28 (a) House Bill No. 5434.

29 (b) House Bill No. 5435.

