

# Michigan Use Tax

## Imposition of the Tax

The Michigan Use Tax Act was created in 1937 with the enactment of Public Act 94 of 1937. The use tax was enacted to compliment the sales tax. Where the sales tax is primarily imposed on the seller of tangible personal property at retail; the use tax is imposed primarily on the consumer of tangible personal property for use, storage or consumption.

The preamble to 1937 PA 94 reads as follows:

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."

Section 3 of the Use Tax Act (MCL 205.93) provides specific language for the imposition of the tax.

(1) There is levied upon and there shall be collected from every person in this state a specific tax for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property or services specified in section 3a or 3b. Penalties and interest shall be added to the tax if applicable as provided in this act.

Section 3 goes on to state that for the purpose of the proper administration and to prevent the evasion of the tax, all of the following shall be presumed:

Tangible personal property purchased is subject to the tax if it is brought into Michigan within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in Michigan. (MCL 205.93(1)(a))

Tangible personal property used solely for personal, nonbusiness purposes that is purchased outside of Michigan and that is not an aircraft is exempt from the tax if 1 or more of the following conditions are satisfied:

The property is purchased by a person who is not a resident of Michigan at the time of purchase and is brought into Michigan more than 90 days after the date of purchase. (MCL 205.93(1)(b)(i))

The property is purchased by a person who is a resident Michigan at the time of purchase and is brought into Michigan more than 360 days after the date of purchase. (MCL 205.93(1)(b)(ii))

The tax imposed for the privilege of using, storing, or consuming a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft shall be collected before the transfer of the vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft. A transfer to a licensed dealer or retailer for purposes of resale that arises by reason of a transaction made by a person who does not transfer vehicles, ORVs, manufactured housing, aircraft, snowmobiles, or watercraft in the ordinary course of his or her business will be exempt as a sale for resale.

The tax on a vehicle, ORV, snowmobile, and watercraft shall be collected by the secretary of state before the transfer of the vehicle, ORV, snowmobile, or watercraft registration.

The tax on manufactured housing shall be collected by the Department of Consumer and Industry Services, mobile home commission, or its agent before the transfer of the certificate of title.

The tax on an aircraft shall be collected by the Department of Treasury.

The price tax base of a new or previously owned car or truck held for resale by a dealer and that is not exempt under section 4(1)(c) is the purchase price of the car or truck multiplied by 2.5% plus \$30.00 per month beginning with the month that the dealer uses the car or truck in a nonexempt manner. (MCL 205.93(2))

The following transfers or purchases are not subject to use tax:

A transaction or a portion of a transaction if the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship, of the transferor.

(MCL 205.93(3)(a))

A transaction or a portion of a transaction if the transfer is a gift to a beneficiary in the administration of an estate. (MCL 205.93(3)(b))

If a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft that has once been subjected to the Michigan sales or use tax is transferred in connection with the organization, reorganization, dissolution, or partial liquidation of an incorporated or unincorporated business and the beneficial ownership is not changed. (MCL 205.93(3)(c))

If an insurance company licensed to conduct business in Michigan acquires ownership of a late model distressed vehicle, through payment of damages in response to a claim or when the person who owned the

vehicle before the insurance company reacquires ownership from the company as part of the settlement of a claim. (MCL 205.93(3)(d))

The Department of treasury may utilize the services, information, or records of any other department or agency of state government in the performance of its duties under this act, and other departments or agencies of state government are required to furnish those services, information, or records upon the request of the department. (MCL 205.93(4))

Section 2 of the Use Tax Act provides definitions for the imposition of the tax. Section 2b provides additional definitions that were added by Public Act 172 of 2004. The definitions from these two sections are presented below, but only to the extent they do not duplicate such definitions contained in the Sales Tax Act.

The Michigan Use Tax is imposed on the storage, use or consumption of tangible personal property in Michigan. "Storage" means a keeping or retention of property in this state for any purpose after the property loses its interstate character. (MCL 205.92(c)) "Use" means the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given. (MCL 205.92(b)) Consumption in Michigan means the tangible personal property was used or stored in Michigan by the consumer. "Consumer" means the person who has purchased tangible personal property or services for storage, use or consumption in Michigan and includes a person acquiring tangible personal property if engaged in the business of constructing, altering, repairing, or improving the real estate of others. (MCL 205.92(g))

"Consumer" means the person who shall have purchased tangible personal property for storage, consumption or use. A "consumer" is further defined as a person who does not purchase goods for sale. The buyer who disposes of goods in any other manner than by resale becomes the final consumer. He is the last person in the chain of transactions to make a purchase. The seller, who is the taxpayer under the sales tax act, is also the consumer of such articles used or consumed in the conduct of his business and sales made to him for his consumption or use are taxable. The fact that a person may be licensed by this department to sell at retail does not in itself exempt sales to such licensee. (Rule 205.8)

"Sale" means a transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in this state. (MCL 205.92(p))

"Seller" means the person from whom a purchase is made and includes every person selling tangible personal property or services for storage, use, or other consumption in Michigan. If it is necessary for the efficient administration to regard a salesperson, representative, peddler, or

canvasser as the agent of a dealer, distributor, supervisor, or employer under whom the person operates or from whom he or she obtains tangible personal property or services sold by him or her for storage, use, or other consumption in this state, irrespective of whether or not he or she is making the sales on his or her own behalf or on behalf of the dealer, distributor, supervisor, or employer, the department may so consider him or her, and may consider the dealer, distributor, supervisor, or employer as the seller. (MCL 205.92(d))

“Purchase” means to acquire for a consideration, whether the acquisition is effected by a transfer of title, of possession, or of both, or a license to use or consume; whether the transfer is absolute or conditional, and by whatever means the transfer is effected; and whether consideration is a price or rental in money, or by way of exchange or barter. (MCL 205.92(e))

“Purchase price” or “price” means the total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to use tax. Purchase price includes the following subparagraphs (i) through (vi) and excludes subparagraphs (vii) through (viii): (MCL 205.92(f))

Purchase price is the measure of the tax base. All of the following are included in the purchase price:

Seller's cost of the property sold. (MCL 205.92(f)(i))

Cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller other than taxes imposed by this act, and any other expense of the seller. (MCL 205.92(f)(ii))

Charges by the seller for any services necessary to complete the sale, other than the following:

(A) An amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer. (MCL 205.92(f)(iii)(A))

(B) Labor or service charges involved in maintenance and repair work on tangible personal property of others if separately itemized. (MCL 205.92(f)(iii)(B))

Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser. (MCL 205.92(f)(iv))

Installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser. (MCL 205.92(f)(v))

Purchase price includes the total gross purchase price when a trade-in is involved. There is no deduction, credit or allowance on account of a trade-in. (MCL 205.92(f)(vi))

Purchase price does not include the following:

Interest, financing, or carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser. (MCL 205.92(f)(vii))

Any taxes legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser. (MCL 205.92(f)(viii))

The following activities require a registration under the Use Tax Act. Unlike the Sales Tax Act, which requires a license, the Use Tax Act only requires a registration if any of the five following activities occur in Michigan:

An out of state seller, not registered as a retailer under the Sales Tax Act, actively soliciting sales of tangible personal property in Michigan.

Normally an out of state seller, because of federal constitutional limitations, would not be required to be licensed under the sales tax act. However, if they have a physical presence in the state of Michigan, a store, warehouse, inventory, or if they solicit sales through the use of employees or independent contractors or agents they must be registered under the Use Tax Act and remit the 6% Use Tax on all sales of tangible personal property in Michigan.

A Michigan consumer buying tangible personal property from non-registered sellers.

A Michigan consumer can be a business or an individual. Any person making purchases of tangible personal property for their own use or consumption is liable for the Michigan Use Tax if the original purchase was not subjected to the Michigan Sales Tax. Normally, a purchase of tangible personal property from a Michigan vendor would be subjected to the sales tax. The exception would be if the purchaser gave the seller a valid claim for exemption. The Use Tax comes into play when purchases are made from out of state sellers who are not required to be registered for the Use Tax.

However, the lessor has the option to purchase the tangible personal property tax-free and remit the 6% Michigan use Tax on the gross rental receipts. Under this option, the lessor must be registered under the Use Tax and remit tax, usually on a monthly basis, on the gross proceeds from the leases.

A seller of intrastate and interstate communication services.

A seller of both interstate and intrastate communications services is subject to the 6% Michigan Use Tax on the gross proceeds from the sale of such services. Therefore, the seller must be registered under the Use Tax Act. Purchases of tangible personal property used or consumed in the providing of the communication services would be exempt from the Michigan Sales Tax and the Michigan Use Tax.

A seller of rental accommodations to the public.

By a specific provision contained in the Use Tax Act, the seller of rental accommodations to the public would be subject to the Michigan Use Tax. The tax applies only if the room is provided for a period of less than 30 days. All tangible personal property by a specific provision in the Use Tax Act, the seller of rental accommodations to the public would be subject to the Use Tax Act. The tax applies only if the room is provided for a period of less than 30 days. All tangible personal property used or consumed in the providing of rental room accommodations to the public would be subject to tax. (Rule 205.26)

A lessor of tangible personal property has the option to pay sales tax on the original purchase of the property to be leased. If this is done there is no further tax responsibility. No tax returns need to be filed and no additional sales tax or use tax needs to be paid.

A lessor of tangible personal property when rental receipts are taxable.

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