

1999 PUBLIC AND LOCAL ACTS

[No. 116]

(SB 544)

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending sections 1, 4a, 4g, 4j, and 4q (MCL 205.51, 205.54a, 205.54g, 205.54j, and 205.54q), section 1 as amended by 1998 PA 451, section 4a as amended by 1998 PA 490, section 4g as amended by 1998 PA 60, section 4j as added by 1985 PA 225, and section 4q as added by 1998 PA 258, and by adding sections 4r, 4t, 4u, 4v, 4w, 4y, and 4z.

The People of the State of Michigan enact:

205.51 Definitions; unlicensed person as agent of dealer, distributor, supervisor, or employer; regarding dealer, distributor, supervisor, or employer as making sales at retail prices. [M.S.A. 7.521]

Sec. 1. (1) As used in this act:

(a) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether organized for profit or not, company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and includes the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) "Sale at retail" means a transaction by which the ownership of tangible personal property is transferred for consideration, if the transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use, or for any purpose other than for resale, or for lease, if the rental receipts are taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, in the form of tangible personal property to a person licensed under this act, or for demonstration purposes or lending or leasing to a public or parochial school offering a course in automobile driving. However, a vehicle purchased by the school shall be certified for driver education and shall not be reassigned for personal use of the school's administrative personnel. For a dealer selling a new car or truck, the exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style in accordance with the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in a calendar year for demonstration purposes.

(c) "Sale at retail" includes a conditional sale, installment lease sale, or other transfer of property if title is retained as security for the purchase price but is intended to be transferred later.

(d) "Sale at retail" includes the sale of electricity, natural or artificial gas, or steam if the sale is made to the consumer or user for consumption or use rather than for resale. Sale at retail also includes the sale of a prepaid telephone calling card or a prepaid authorization number for telephone use, rather than for resale. Sale at retail also includes the reauthorization of a prepaid telephone calling card or a prepaid authorization number. Sale at retail does not include the sale of water through water mains or the sale of water delivered in bulk tanks in quantities of not less than 500 gallons.

(e) "Sale at retail" includes computer software offered for general sale to the public or software modified or adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as is basis or as an end product without modification or adaptation. Sale at retail does not include specific charges for technical support or for adapting or modifying prewritten, standard, or canned computer software programs to a purchaser's needs or equipment if those charges are separately stated and identified. Sale at retail does not include computer software originally designed for the exclusive use and special needs of the purchaser. As used in this subdivision, "computer software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result.

(f) "Sale at retail" includes the sale of tangible personal property by an industrial laundry under a sale, rental, or service agreement with a term of at least 5 days.

(g) "Sale at retail" does not include an isolated transaction by a person not licensed or required to be licensed under this act, in which tangible personal property is offered for sale, sold, transferred, and delivered by the owner.

(h) "Sale at retail" does not include a commercial advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. Sale at retail includes black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

(i) "Gross proceeds" means the amount received in money, credits, subsidies, property, or other money's worth in consideration of a sale at retail within this state, without a deduction for the cost of the property sold, the cost of material used, the cost of labor or service purchased, an amount paid for interest or a discount, a tax paid on cigarettes or tobacco products at the time of purchase, a tax paid on beer or liquor at the time of purchase or other expenses. Also, a deduction is not allowed for losses. Gross proceeds do not include 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. In a taxable sale at retail of a motor vehicle, if another motor vehicle is used as part payment of the purchase price, the value of the motor vehicle used as part payment of the purchase price shall be that value agreed to by the parties to the sale as evidenced by the signed statement executed pursuant to section 251 of the Michigan vehicle code, 1949 PA 300, MCL 257.251. A credit or refund for returned goods or a refund less an allowance for use made for a motor vehicle returned under 1986 PA 87, MCL 257.1401 to 257.1410, as certified by the manufacturer on a form provided by the department of treasury, may be deducted.

(j) "Business" includes an activity engaged in by a person or caused to be engaged in by that person with the object of gain, benefit, or advantage, either direct or indirect.

(k) "Tax year" or "taxable year" means the fiscal year of the state or the taxpayer's fiscal year if permission is obtained by the taxpayer from the department to use the taxpayer's fiscal year as the tax period instead.

(l) "Department" means the revenue division of the department of treasury.

(m) "Taxpayer" means a person subject to a tax under this act.

(n) "Tax" includes a tax, interest, or penalty levied under this act.

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

(2) If the department determines that it is necessary for the efficient administration of this act to regard an unlicensed person, including a salesperson, representative, peddler, or canvasser as the agent of the dealer, distributor, supervisor, or employer under whom the unlicensed person operates or from whom the unlicensed person obtains the tangible personal property sold by the unlicensed person, irrespective of whether the unlicensed person is making sales on the unlicensed person's own behalf or on behalf of the dealer, distributor, supervisor, or employer, the department may so regard the unlicensed person and may regard the dealer, distributor, supervisor, or employer as making sales at retail at the retail price for the purposes of this act.

205.54a Sales excluded from gross proceeds. [M.S.A. 7.525(1)]

Sec. 4a. (1) A person subject to tax under this act may exclude from the amount of the gross proceeds used for the computation of the tax, a sale of tangible personal property, subject to subsection (2):

(a) Not for resale to a nonprofit school, nonprofit hospital, or nonprofit home for the care and maintenance of children or aged persons operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of the state, if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or any restricted group. At the time of the transfer of this tangible personal property, the transferee shall sign a statement, in a form approved by the department, stating that the property is to be used or consumed in connection with the operation of the institution or agency and that the institution or agency qualifies as an exempt entity under this subdivision. The statement shall be accepted by all courts as prima facie evidence of the exemption and the statement shall provide that if the claim for tax exemption is disallowed the transferee will reimburse the transferor for the amount of tax involved. A sale of tangible personal property to a parent cooperative preschool is exempt from taxation under this act. As used in this subdivision, "parent cooperative preschool" means a nonprofit, nondiscriminatory educational institution, maintained as a community service and administered by parents of children currently enrolled in the preschool, that provides an educational and developmental program for children younger than compulsory school age, that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel, and that is licensed by the department of consumer and industry services pursuant to 1973 PA 116, MCL 722.111 to 722.128.

(b) Not for resale to a regularly organized church or house of religious worship, except the following:

(i) Sales in activities that are mainly commercial enterprises.

(ii) Sales of vehicles licensed for use on public highways other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of persons for religious purposes.

(c) To bona fide enrolled students, of food by a school or other educational institution not operated for profit.

(d) That is a vessel designated for commercial use of registered tonnage of 500 tons or more, if produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of the vessel engaged in interstate commerce.

(e) To persons engaged in a business enterprise and using or consuming the tangible personal property in the tilling, planting, caring for, or harvesting of the things of the soil; in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth; or in the direct gathering of fish, by net, line, or otherwise only by an owner-operator of the business enterprise, not including a charter fishing business enterprise. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land, and subsurface irrigation pipe, if the land tile or irrigation pipe is used in the production of agricultural products as a business enterprise. At the time of the transfer of this tangible personal property, the transferee shall sign a statement, in a form approved by the department, stating that the property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise, or in connection with fishing as an owner-operator business enterprise. The statement shall be accepted by all courts as prima facie evidence of the exemption. This exemption includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption also includes grain drying equipment and natural or propane gas used to fuel that equipment for agricultural purposes. This exemption does not include transfers of food, fuel, clothing, or any similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed and becoming a structural part of real estate.

(f) That is a copyrighted motion picture film or a newspaper or periodical admitted under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established not less than 2 years, and published not less than once a week. Tangible personal property used or consumed in producing a copyrighted motion picture film, a newspaper published more than 14 times per year, or a periodical published more than 14 times per year, and not becoming a component part of that film, newspaper, or periodical is subject to the tax. After December 31, 1993, tangible personal property used or consumed in producing a newspaper published 14 times or less per year or a periodical published 14 times or less per year and that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is exempt from the tax under this subdivision. A claim for a refund for taxes paid before January 1, 1999, under this subdivision shall be made before June 30, 1999. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

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(g) To persons licensed to operate commercial radio or television stations if the property is used in the origination or integration of the various sources of program material for commercial radio or television transmission. This subdivision does not include a vehicle licensed and titled for use on public highways or property used in the transmission to or receiving from an artificial satellite.

(h) That is a hearing aid, contact lenses if prescribed for a specific disease that precludes the use of eyeglasses, or any other apparatus, device, or equipment used to replace or substitute for a part of the human body, or used to assist the disabled person to lead a reasonably normal life if the tangible personal property is purchased on a written prescription or order issued by a health professional as defined by section 21005 of the public health code, 1978 PA 368, MCL 333.21005; a hearing aid battery; or eyeglasses prescribed or dispensed to correct the person's vision by an ophthalmologist, optometrist, or optician.

(i) That is a vehicle not for resale to a Michigan nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

(j) To inmates in a penal or correctional institution purchased with scrip issued and redeemed by the institution.

(k) To or for the use of students enrolled in any part of a kindergarten through twelfth grade program, of textbooks sold by a public or nonpublic school.

(l) Installed as a component part of a water pollution control facility for which a tax exemption certificate is issued pursuant to part 37 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution control facility for which a tax exemption certificate is issued pursuant to part 59 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

(m) To a purchaser of a new motor vehicle purchased before January 1, 1993 if the purchaser qualifies for a special registration under section 226(12) of the Michigan vehicle code, 1949 PA 300, MCL 257.226, and the vehicle is purchased through a country determined by the department to be providing a like or complete exemption for the purchase of a new motor vehicle to be removed from that country.

(n) That is the following sold or leased to an industrial laundry after December 31, 1997:

(i) Textiles and disposable products including, but not limited to, soap, paper, chemicals, tissues, deodorizers and dispensers, and all related items such as packaging, supplies, hangers, name tags, and identification tags.

(ii) Equipment, whether owned or leased, used to repair and dispense textiles including, but not limited to, roll towel cabinets, slings, hardware, lockers, mop handles and frames, and carts.

(iii) Machinery, equipment, parts, lubricants, and repair services used to clean, process, and package textiles and related items, whether owned or leased.

(iv) Utilities such as electric, gas, water, or oil.

(v) Production washroom equipment and mending and packaging supplies and equipment.

(vi) Material handling equipment including, but not limited to, conveyors, racks, and elevators and related control equipment.

(vii) Wastewater pretreatment equipment and supplies and related maintenance and repair services.

(o) To a person holding a direct payment permit under section 8 of the use tax act, 1937 PA 94, MCL 205.98.

(2) The tangible personal property under subsection (1) is exempt only to the extent that that property is used for the exempt purpose if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

205.54g Gross proceeds used for computation of tax; exclusions; "prescription drugs for human use," "food for human consumption," and "prepared food intended for immediate consumption" defined. [M.S.A. 7.525(7)]

Sec. 4g. (1) A person subject to tax under this act may exclude from the amount of the gross proceeds used for the computation of the tax 1 or more of the following:

(a) Sales of prescription drugs for human use or food for human consumption, except prepared food intended for immediate consumption.

(b) The deposit on a returnable container for a beverage or the deposit on a carton or case that is used for returnable containers.

(c) Food or tangible personal property purchased with federal food stamps.

(d) Fruit or vegetable seeds and fruit or vegetable plants if purchased at a place of business authorized to accept food stamps by the food and nutrition service of the United States department of agriculture or a place of business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of denial to the department of treasury.

(2) "Prescription drugs for human use" means insulin or a drug dispensed by a licensed pharmacist pursuant to a written prescription prescribed by a licensed physician or other health professional as defined by section 21005 of the public health code, 1978 PA 368, MCL 333.21005, for the use of a designated person, or oxygen dispensed pursuant to a written prescription or order issued by a licensed physician or other health professional as defined in section 21005 of the public health code, 1978 PA 368, MCL 333.21005.

(3) "Food for human consumption" means all food and drink items, including bottled water, intended primarily for human consumption except beverages with an alcohol content of 1/2 of 1% or more by volume, tobacco and tobacco products, and prepared food intended for immediate consumption. Food for human consumption includes live animals purchased with the intent to be slaughtered for human consumption.

(4) "Prepared food intended for immediate consumption" means a retail sale of 1 or more of the following:

(a) Food or drink prepared and served for immediate consumption at or near the premises or ordinarily sold on a takeout basis for immediate consumption either on or off the premises. For the purposes of this section premises includes the total space and facilities in or on which a retailer conducts his or her business, including, but not limited to, parking areas for the convenience of in-car consumption, outdoor tables, benches, chairs, and similar conveniences.

(b) Food or drink furnished, prepared, or served for immediate consumption at a table, chair, or counter or from a tray, glass, dish, container, or other tableware.

(c) Food or drink arranged on a plate or platter, whether intended for individual or multiple servings and whether sold by the pound or by the serving; a sandwich, either hot or cold; or a combination of taxable and nontaxable items when sold as a plate or packaged as a meal, even though intended for more than 1 serving.

(d) Food that is cooked to the order of the purchaser, or that is cooked and maintained at a temperature higher than the surrounding air temperature before sale, or prepared food that is sold by the piece rather than by weight or measure.

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(e) After December 31, 1994, carbonated beverages sold from a mobile facility or vending machine, or food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees fahrenheit or below 65 degrees fahrenheit before sale and sold from a mobile facility or vending machine, except milk, noncarbonated beverages containing 10% or more juice content, and fresh fruit. A refund shall not be made for any taxes paid after December 31, 1994 and before January 16, 1997 for food or drink otherwise exempt under this subdivision. The tax due under this act on the sale of food or drink from a vending machine selling both taxable items and items exempt under this subsection shall be calculated under this act after December 31, 1994 based on 1 of the following as determined by the taxpayer:

(i) Actual gross proceeds from sales at retail.

(ii) The sum of proceeds from carbonated beverages and 45% of proceeds from the sale of items subject to tax under this act or exempt from the tax levied under this act, other than from the sale of carbonated beverages.

(5) Prepared food intended for immediate consumption does not include bakery products for off-premises consumption, such as doughnuts, pastry, bread, and cakes or meals eligible to be purchased with federal food stamps.

205.54j Sale of tangible personal property for use in qualified business activity of purchaser; definition. [M.S.A. 7.525(10)]

Sec. 4j. (1) A person subject to tax under this act may exclude from the gross proceeds used for the computation of the tax a sale of tangible personal property to the extent the tangible personal property is used in a qualified business activity of the purchaser.

(2) As used in this section, "qualified business activity" means that term as defined in the enterprise zone act.

205.54q Sales of tangible personal property not for resale; exclusion from gross proceeds; applicability; duties of transferee; evidence of exemption; limitation. [M.S.A. 7.525(17)]

Sec. 4q. (1) A person subject to the tax under this act may exclude from the gross proceeds used for the computation of this tax, sales of tangible personal property not for resale to the following subject to subsection (5):

(a) A health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued an exemption ruling letter to purchase items exempt from tax before the effective date of this section signed by the administrator of the sales, use, and withholding taxes division of the department.

(b) An organization not operated for profit and exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the internal revenue code of 1986.

(2) The exemptions provided for in subsection (1) do not apply to sales of tangible personal property and sales of vehicles licensed for use on public highways, that are not used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt entity.

(3) At the time of the transfer of the tangible personal property exempt under subsection (1), the transferee shall do 1 of the following:

(a) Present the exemption ruling letter signed by the administrator of the sales, use, and withholding taxes division of the department certifying that the property is to be used or consumed in connection with the operation of the organization.

(b) Present a signed statement, on a form approved by the department, stating that the property is to be used or consumed in connection with the operation of the organization and that the organization qualifies as an exempt organization under this section. The transferee shall also provide to the transferor a copy of the federal exemption letter.

(4) The letter provided under subsection (3)(a) and the statement with the accompanying letter provided under subsection (3)(b) shall be accepted by all courts as prima facie evidence of the exemption and the statement shall provide that if the claim for tax exemption is disallowed, the transferee will reimburse the transferor for the amount of tax involved.

(5) The tangible personal property under subsection (1) is exempt only to the extent that the property is used to carry out the purposes of the organization as stated in the organization's bylaws or articles of incorporation. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

205.54r Qualified truck, trailer, or rolling stock; exemption; definitions. [M.S.A. 7.525(18)]

Sec. 4r. (1) A person subject to tax under this act may exclude from the amount of the gross proceeds used for the computation of the tax 1 or more of the following:

(a) The product of the out-of-state usage percentage and the gross proceeds otherwise taxable under this act from the sale of a qualified truck or a trailer designed to be drawn behind a qualified truck, purchased after December 31, 1996 and before May 1, 1999 by an interstate motor carrier and used in interstate commerce.

(b) A sale of rolling stock purchased by an interstate motor carrier or for rental or lease to an interstate motor carrier and used in interstate commerce.

(2) As used in this section:

(a) "Interstate motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.

(b) "Out-of-state usage percentage" is a fraction, the numerator of which is the number of miles driven outside of this state in the immediately preceding tax year by qualified trucks used by the interstate motor carrier and the denominator of which is the total miles driven in the immediately preceding tax year by qualified trucks used by the interstate motor carrier. Miles driven by qualified trucks used solely in intrastate commerce shall not be included in calculating the out-of-state usage percentage.

(c) "Qualified truck" means a commercial motor vehicle power unit that has 2 axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has 3 or more axles.

(d) "Rolling stock" means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts affixed to either a qualified truck or a trailer designed to be drawn behind a qualified truck.

205.54t Industrial processing equipment; exemption. [M.S.A. 7.525(20)]

Sec. 4t. (1) A person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the sale of tangible personal property to the following after March 30, 1999, subject to subsection (2):

(a) An industrial processor for use or consumption in industrial processing.

(b) A person, whether or not the person is an industrial processor, if the tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor.

(c) A person, whether or not the person is an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor.

(d) A person, whether or not the person is an industrial processor, if the tangible personal property is 1 of the following:

(i) A computer used in operating industrial processing equipment.

(ii) Equipment used in a computer assisted manufacturing system.

(iii) Equipment used in a computer assisted design or engineering system integral to an industrial process.

(iv) A subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

(v) Computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under section 4q.

(vi) Equipment used in the production of computer software that is offered for general sale to the public or software modified or adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as-is basis or as an end product without modification or adaption.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purpose stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Industrial processing includes the following activities:

(a) Production or assembly.

(b) Research or experimental activities.

(c) Engineering related to industrial processing.

(d) Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage.

(e) Planning, scheduling, supervision, or control of production or other exempt activities.

(f) Design, construction, or maintenance of production or other exempt machinery, equipment, and tooling.

(g) Remanufacturing.

(h) Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.

(i) Recycling of used materials for ultimate sale at retail or reuse.

(j) Production material handling.

(k) Storage of in-process materials.

(4) Property that is eligible for an industrial processing exemption includes the following:

(a) Property that becomes an ingredient or component part of the finished product to be sold ultimately at retail.

(b) Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance.

(c) Property that is consumed or destroyed or that loses its identity in an industrial processing activity.

(d) Tangible personal property, not permanently affixed and not becoming a structural part of real estate, that becomes a part of, or is used and consumed in installation and maintenance of, systems used for an industrial processing activity.

(e) Fuel or energy used or consumed for an industrial processing activity.

(f) Machinery, equipment, or materials used within a plant site or between plant sites operated by the same person for movement of tangible personal property in the process of production.

(g) Office equipment, including data processing equipment, used for an industrial processing activity.

(5) Property that is not eligible for an industrial processing exemption includes the following:

(a) Tangible personal property permanently affixed and becoming a structural part of real estate including building utility systems such as heating, air conditioning, ventilating, plumbing, lighting, and electrical distribution, to the point of the last transformer, switch, valve, or other device at which point usable power, water, gas, steam, or air is diverted from distribution circuits for use in industrial processing.

(b) Office equipment, including data processing equipment used for nonindustrial processing purposes.

(c) Office furniture or office supplies.

(d) An industrial processor's own product or finished good that it uses or consumes for purposes other than industrial processing.

(e) Tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user or consumer.

(f) Tangible personal property used for receiving or storage of natural resources extracted by the user or consumer.

(g) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways, except for a vehicle bearing a manufacturer's plate or a specially designed vehicle, together with parts, used to mix and agitate materials at a plant or job site in the concrete manufacturing process.

(h) Tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations.

(i) Tangible personal property used or consumed for the preservation or maintenance of a finished good once it first comes to rest in finished goods inventory storage.

(j) Returnable shipping containers or materials, except as provided in subsection (4)(f).

(k) Tangible personal property used in the production of computer software originally designed for the exclusive use and special needs of the purchaser.

(6) Industrial processing does not include the following activities:

(a) Purchasing, receiving, or storage of raw materials.

- (b) Sales, distribution, warehousing, shipping, or advertising activities.
- (c) Administrative, accounting, or personnel services.
- (d) Design, engineering, construction, or maintenance of real property and nonprocessing equipment.

(e) Plant security, fire prevention, or medical or hospital services.

(7) As used in this section:

(a) "Industrial processing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

(b) "Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.

(c) "Product", as used in subdivision (e), includes but is not limited to a prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a trade or business or to be sold, transferred, leased, or licensed.

(d) "Remanufacturing" means the activity of overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail.

(e) "Research or experimental activity" means activity incident to the development, discovery, or modification of a product or a product related process. Research or experimental activity also includes activity necessary for a product to satisfy a government standard or to receive government approval. Research or experimental activity does not include the following:

- (i) Ordinary testing or inspection of materials or products for quality control purposes.
- (ii) Efficiency surveys.
- (iii) Management surveys.
- (iv) Market or consumer surveys.
- (v) Advertising or promotions.
- (vi) Research in connection with literacy, historical, or similar projects.

205.54u Extractive operation, exemption. [M.S.A. 7.525(21)]

Sec. 4u. (1) A person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the sale of tangible personal property to an extractive operator for use or consumption in extractive operations.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Extractive operations include the actual production of oil, gas, brine, or other natural resources. Property eligible for the exemption includes the following:

- (a) Casing pipe or drive pipe.
- (b) Tubing.
- (c) Well-pumping equipment.

(d) Chemicals.

(e) Explosives or acids used in fracturing, acidizing, or shooting wells.

(f) Christmas trees, derricks, or other wellhead equipment.

(g) Treatment tanks.

(h) Piping, valves, or pumps used before movement or transportation of the natural resource from the production area.

(i) Chemicals or acids used in the treatment of crude oil, gas, brine, or other natural resources.

(j) Tangible personal property used or consumed in depositing tailings from hard rock mining processing.

(k) Tangible personal property used or consumed in extracting the lithologic units necessary to process iron ore.

(4) The extractive operation exemption does not include the following:

(a) Tangible personal property consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, and storage and housing facilities.

(b) Tangible personal property consumed or used in transporting the product from the place of extraction, except for tangible personal property consumed or used in transporting extracted materials from the extraction site to the place where the extracted materials first come to rest in finished goods inventory storage.

(c) Tangible personal property that is a product the extractive operator produces and that is consumed or used by the extractive operator for a purpose other than the manufacturing or producing of a product for ultimate sale. The extractor shall account for and remit the tax to the state based upon the product's fair market value.

(d) Equipment, materials, and supplies used in exploring, prospecting, or drilling for oil, gas, brine, or other natural resources.

(e) Equipment, materials, and supplies used in the storing, withdrawing, or distribution of oil, gas, or brine from a storage facility.

(f) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways.

(5) As used in this section:

(a) "Extractive operations" means the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An extractive operation begins when contact is made with the actual type of natural raw product being recovered. Extractive operation includes all necessary processing operations before shipment from the place of extraction. Extractive operations includes all necessary processing operations and movement of the natural resource material until the point at which the natural raw product being recovered first comes to rest in finished goods inventory storage at the extraction site.

(b) An extractive operator is a person who, either directly or by contract, performs extractive operations.

205.54v Central office equipment or wireless equipment; presumption. [M.S.A. 7.525(22)]

Sec. 4v. (1) The tax levied under this act does not apply to the purchase of machinery and equipment for use or consumption in the rendition of any combination of services, the use or consumption of which is taxable under section 3a(a) or (c) of the use tax act, 1937

PA 94, MCL 205.93a, except that this exemption is limited to the tangible personal property located on the premises of the subscriber and to central office equipment or wireless equipment, directly used or consumed in transmitting, receiving, or switching, or in the monitoring of switching of a 2-way interactive communication. As used in this subsection, central office equipment or wireless equipment does not include distribution equipment including cable or wire facilities.

(2) Beginning April 1, 1999, the property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. There is an irrebuttable presumption that 90% of total use is for exempt purposes. This presumption is in effect until April 1, 2006, at which time the presumption shall be reviewed and redetermined by the department of treasury using nonexempt and exempt user information for the previous 12-month period. That redetermined irrebuttable presumption shall be in effect for the following 7 years. The irrebuttable presumption shall be reviewed and redetermined every 7 years after April 1, 2006 and applied to the following 7 years.

205.54w Nonprofit hospital or nonprofit housing; exemption in business of constructing, altering, repairing, or improving property; exception; definitions. [M.S.A. 7.525(23)]

Sec. 4w. (1) For taxes levied after June 30, 1999, a person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the sale of tangible personal property to a person directly engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent that the property is affixed to and made a structural part of a nonprofit hospital or a nonprofit housing entity qualified as exempt under section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a.

(2) An exemption shall not be granted under this section for any portion of property otherwise qualifying for exemption under this section if income or a benefit inures directly or indirectly to an individual, private stockholder, or other private person from the independent or nonessential operation of that portion of property.

(3) As used in this section:

(a) "Nonprofit hospital" means 1 of the following:

(i) That portion of a building to which 1 of the following applies:

(A) Is owned or operated by an entity exempt under section 501(c)(3) of the internal revenue code of 1986 that is licensed as a hospital under part 215 of the public health code, 1978 PA 368, MCL 333.21501 to 333.21568.

(B) Is owned or operated by a governmental unit in which medical attention is provided.

(C) Is owned or operated by an entity or entities exempt under section 501(c)(2) or (3) of the internal revenue code of 1986 in which medical attention is provided.

(ii) That portion of real property necessary and related to a building described in subparagraph (i) in which medical attention is provided.

(iii) A county long-term medical care facility built after December 31, 1995.

(b) "Nonprofit hospital" does not include the following:

(i) A freestanding building or other real property of a nursing home or skilled nursing facility licensed under part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e.

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(ii) A hospice licensed under part 214 of the public health code, 1978 PA 368, MCL 333.21401 to 333.21421.

(iii) A home for the aged licensed under part 213 of the public health code, 1978 PA 368, MCL 333.21301 to 333.21333.

(c) "Medical attention" means that level of medical care in which a physician provides acute care or active treatment of medical, surgical, obstetrical, psychiatric, chronic, or rehabilitative conditions, that require the observation, diagnosis, and daily treatment by a physician.

205.54y Industrial processing; exemption; limitation.
[M.S.A. 7.525(25)]

Sec. 4y. (1) Subject to subsection (2), a person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the sale of tangible personal property to the following after March 30, 1995 but before March 31, 1999:

(a) An industrial processor for use or consumption in industrial processing. Property used or consumed in industrial processing does not include tangible personal property permanently affixed and becoming a structural part of real estate; office furniture, office supplies, and administrative office equipment; or vehicles licensed and titled for use on public highways other than a specially designed vehicle, together with parts, used to mix and agitate materials added at a plant or job site in the concrete manufacturing process. Industrial processing does not include receipt and storage of raw materials purchased or extracted by the user or consumer, or the preparation of food and beverages by a retailer for retail sale. As used in this subdivision, "industrial processor" means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail. Sales to a person performing a service who does not act as an industrial processor while performing the service may not be excluded under this subdivision, except as provided in subdivision (b).

(b) A person, whether or not the person is an industrial processor, if the property is a computer used in operating industrial processing equipment; equipment used in a computer assisted manufacturing system; equipment used in a computer assisted design or engineering system integral to an industrial process; a subunit or electronic assembly comprising a component in a computer integrated industrial processing system; or computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under section 4q.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

205.54z Construction, alteration, repair, or improvement to non-profit hospital before July 1, 1999. [M.S.A. 7.525(26)]

Sec. 4z. (1) For taxes levied after December 31, 1990 and before July 1, 1999, the tax levied under this act does not apply to a claimed exemption of tangible personal property used in the construction, alteration, repair, or improvement of the real estate or is affixed to and made a structural part of a building of a nonprofit hospital provided the following criteria have been met:

(a) A nonprofit hospital is an entity described in section 4w(3)(a)(i).

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(b) A binding contract had been entered into for the construction, alteration, repair, or improvement of the real estate or the affixation to the building before July 1, 1999.

(c) The claimed exemption was made in good faith.

(2) The provisions of this section shall not be applied to affect any final decision of a court.

(3) A claim for refund for an exemption under this section shall be filed not later than July 15, 1999. The approved refunds shall be paid without interest.

Effect of §§205.54g and 205.54r for taxes levied after April 30, 1999.

Enacting section 1. Sections 4g and 4r of this amendatory act are effective for taxes levied after April 30, 1999.

Clarification of existing law.

Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.

Conditional effective date.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 90th Legislature are enacted into law:

(a) House Bill No. 4744.

(b) House Bill No. 4745.

This act is ordered to take immediate effect.

Approved July 14, 1999.

Filed with Secretary of State July 14, 1999.

Compiler's note: House Bill No. 4744, referred to in enacting section 3, was filed with the Secretary of State July 14, 1999, and became P.A. 1999, No. 117, Imd. Eff. July 14, 1999.

House Bill No. 4745, also referred to in enacting section 3, was filed with the Secretary of State July 14, 1999, and became P.A. 1999, No. 115, Imd. Eff. July 14, 1999.
