

STATE OF MICHIGAN  
IN THE SUPREME COURT

TRUGREEN LIMITED PARTNERSHIP,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,  
STATE OF MICHIGAN

Defendant-Appellee.

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Supreme Court No. 163515

Court of Appeals No. 341442

Court of Claims No. 17-000141-MT

**APPELLEE'S APPENDIX**

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# Legislative Analysis

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## STREAMLINED SALES AND USE TAX PROJECT

**House Bill 5502 as enrolled**  
**Public Act 172 of 2004**  
**Sponsor: Rep. Lorence Wenke**

**House Bills 5503 as enrolled**  
**Public Act 173 of 2004**  
**Sponsor: Rep. Dianne Byrum**

**House Bill 5504 as enrolled**  
**Public Act 174 of 2004**  
**Sponsor: Rep. Paul Condino**

**House Bill 5505 as enrolled**  
**Public Act 175 of 2004**  
**Sponsor: Rep. James Koetje**

**House Committee: Tax Policy**  
**Senate Committee: Finance**  
**Second Analysis (8-24-04)**

**BRIEF SUMMARY:** Together, the bills would authorize the state's participation in the Streamlined Sales Tax Project, a multi-state effort to simplify and modernize sales and use tax collection and administration as a means of reducing the burden of collecting those taxes on sellers, thereby increasing compliance with the taxes. House Bill 5504 would create the Streamlined Sales and Use Tax Administration Act, and House Bill 5505 would create the Streamlined Sales and Use Tax Revenue Equalization Act. House Bill 5502 and House Bill 5503 would amend the Use Tax Act and the General Sales Tax Act, respectively, to make complementary changes in those acts for the state to be in compliance with the agreement. The bills are tie-barred to one another. House Bill 5504 would be effective July 1, 2004; the others would take effect on September 1, 2004.

**FISCAL IMPACT:** These bills would have a minimal fiscal impact, which consists of two components. The changes to the sales and use tax bases, dealing primarily with the adoption of uniform definitions, would reduce revenue by an estimated \$18.3 million (\$17.0 million in sales tax and \$1.3 million in use tax) in FY 2004-05. In addition, to the extent that these bills encourage or increase voluntary compliance, state revenue would increase less any collection allowances. The uncollected revenue on remote sales is estimated to be between \$250 million and \$300 million in FY 2004-05. Remote sales include mail order and electronic commerce (sales orders placed via the Internet). Currently 33% of state use tax revenue is earmarked to the School Aid Fund (SAF), while the remaining 67% is General Fund/General Purpose (GF/GP) revenue. Approximately, 73% of state sales tax revenue is earmarked to the SAF, 10% to constitutional revenue sharing, and the remaining 2% is GF/GP revenue.

**THE APPARENT PROBLEM:**

In 1937 Michigan enacted the Use Tax Act (Public Act 94) as a companion to the General Sales Tax Act. Where the sales tax is a tax on retail sales of personal property (unless exempt) made inside the state, the use tax is levied, generally speaking, on remote sales (such as those made through the Internet or mail order catalogues) and on out-of-state purchases of products that are then brought back into the state for storage, use, and consumption. The use tax is a necessary supplement to the sales tax, as many taxpayers could otherwise avoid the sales tax by making purchases in other states. (The need for this was greater when the act was originally enacted, as there were fewer states with a sales tax). The use tax does not apply to transactions that are subject to the sales tax, and the taxpayer receives a credit for taxes paid to other states, so that a Michigan resident who purchases a product in another state and pays an equivalent amount of sales tax in that other state is not liable for the use tax in Michigan.

While the sales and use taxes are in some ways very similar - and easily confused - they differ significantly in their administration and rate of compliance. The statutory incidence of the sales tax is on retailers, as the tax is technically a tax on the privilege of doing business in the state. Although retailers can shift the incidence of the tax to consumers, by adding the tax to the purchase price of products, they are legally obligated to file a sales tax return and remit the appropriate amount of tax to the state.

The statutory and actual incidence of the use tax, by contrast, falls on consumers. For the most part, the tax is self-reported by the taxpayer, and the state is limited in its ability to enforce the tax. The state does enforce collection of the use tax in cases where purchases subject to the tax are required to be registered, such as automobiles, boats, and airplanes, but as a practical matter, compliance with the use tax in other cases has been considered voluntary. (Although nonpayment of the use tax is, technically speaking, tax evasion.) In 1999, the state income tax form was amended to include a line for taxpayers to use in reporting any use tax due on products purchased in the tax year as a means of improving enforcement and collection.

Enforcement of the use tax has been a problem for Michigan and other states for some time. Many taxpayers are unaware of their use tax liability, while others simply ignore it altogether. Moreover, states have had limited success in court when trying to require remote sellers (those outside of the state) to collect and remit use taxes on purchases by state residents. The problem largely stems from two key United States Supreme Court cases, *National Bellas Hess, Inc. v. Department of Revenue of Illinois* 386 U.S. 753 (1967) and *Quill Corp. v. North Dakota* 504 U.S. 98 (1992). Generally speaking, the court, in *Bellas Hess*, ruled that an out-of-state business with no physical presence (“nexus”) in a state could not be required to collect and remit use tax on goods purchased by residents of that state. Requiring collection, the court held, would violate the Commerce Clause of the U.S. Constitution (Article 1, Section 8, clause 3). The *Quill* decision, as it relates to the Commerce Clause, reaffirmed the court’s ruling in *Bellas Hess*. (See [Background Information](#) for greater detail on these cases.)

The problem of noncompliance with the use tax has grown in importance with the advent of the Internet and the expansion of “e-commerce”. Even earlier, the North Dakota Supreme Court, in ruling that North Dakota could require Quill and other remote sellers to collect and remit use taxes (a ruling overturned by the U.S. Supreme Court), noted that “[t]he economic, social and commercial landscape upon which *Bellas Hess* was premised [in 1967] no longer exists...In the quarter-century which has passed in the interim, ‘mail order’ has grown from a relative inconsequential market niche into a goliath now more accurately delineated as ‘direct marketing.’” The court further noted, “[w]hile in 1967 it may have generally been necessary to rely upon in-state sales personnel and inventory to successfully market a product, technology has changed the rules of the game. Today a direct marketer can communicate with his customers across the country through toll-free incoming telephone lines, national WATS telephone service, fax machines, telex, or direct computer communication just as effectively, and more efficiently, than if he were calling personally on each customer. Clearly the direct marketing of the 1990’s bears little resemblance to the mail order of the 1960’s.” Similarly, one could reasonably argue that remote sales (direct marketing) in the 21<sup>st</sup> century “bears little resemblance” to the remote sales of the 1990’s. Indeed, a July 2002 report on the sales and use taxes by the Office of Revenue and Tax Analysis (ORTA) within the Michigan Department of Treasury notes, “[a]s computer technology becomes more prevalent in everyday life, shopping through the Internet is growing at an astronomical rate.”

The fiscal consequences of remote sales are significant for states that impose sales and use taxes. While Michigan has attempted to improve collection of use taxes owed by individual consumers (particularly through the inclusion of a line on the income tax return to report any use tax due), such efforts have fallen short. In its July 2002 report, ORTA noted that in FY 2000, 80,152 taxpayers submitted \$3.1 million of use tax through their income tax return. This amounted approximately 1.5 percent of the estimated use tax liability that goes uncollected from remote sales.

Attempts to estimate the amount of revenue lost have proven to be difficult and have yielded wide-ranging results. In a 2000 study on electronic commerce, the General Accounting Office (GAO) noted, “[i]mportant factors that determine the tax loss on Internet and remote sales are the volume of Internet and other remote sales, the portion of the sales subject to tax, the extent of compliance by sellers or purchasers, and the extent to which Internet sales displace other types of remote sales. However...little data exist on these factors and the accuracy of the information that exists is often unknown.”

In its report, ORTA cited a study by the Center for Business and Economic Research at the University of Tennessee, which estimated sales and use tax losses at over \$20 billion in 2003. However, that figure included business-to-business remote sales, which the department believes results in revenue losses are relatively small (though with the potential to greatly expand) when compared to business-to-consumer sales. In terms of business-to-consumer sales, ORTA noted that Michigan’s revenue losses have been estimated at \$210 million in FY 2001, and \$349 million in FY 2005. As should be expected, the increasing losses are largely the product of the expansion of e-commerce.

A new effort to improve compliance and collections began in earnest in 2000 with the development of the Streamlined Sales Tax Project (SSTP), which involved 32 states, including Michigan, and six observer states, as well as input from businesses and local governments. The mission of the project was to develop and implement a simplified and uniform sales and use tax system that will encourage *voluntary* use tax compliance. This has proven to be a daunting task, as 34 of the 45 states with a sales tax allow local sales taxes, and 30 states have multiple rates. (The problem of multiple taxing jurisdictions within the states is particularly problematic.) Further, states often treat the same products differently and have different kinds of exemptions and definitions in their tax laws, all of which complicate the creation of a multi-state system.

In November 2002, 33 participating states, including Michigan, ratified an agreement specifying the changes in the sales and use taxes needed for each state to be in compliance with the agreement. The agreement requires states to adopt a state-level administrative process, implement a common tax base, and provide a transparent system to notify vendors of tax rate and tax base changes. The agreement also contains uniform provisions related to sourcing nontraditional sales and telecommunication fees and taxes, and simplified administrative procedures, includes the treatment of exemptions, the filing of returns, and the recovery of bad debts. However, in addition to agreement with the agreement, states must also adopt the necessary changes to their sales tax and use tax laws.

In October 2001, then-Governor Engler signed into law Public Act 122 of 2001 (House Bill 5080). That legislation, referred to as the Equitable Sales and Use Tax Administration Act, permitted Michigan to enter into the streamlined sales and use tax agreement. The state was a participant in the agreement. However, the act contained a sunset of December 31, 2002, and the state is no longer an active participant in the streamlined sales tax project. Legislation has been introduced that would again allow the state to become a participant, and that would make necessary changes to allow state tax law to be substantially in compliance with the agreement.

### ***THE CONTENT OF THE BILLS:***

#### **House Bill 5504 - Streamlined Sales and Use Tax Administration Act**

The bill would create the Streamlined Sales and Use Tax Administration Act under which the state treasurer could enter into the streamlined sales and use tax agreement with one or more other states to simplify the sale and use tax administration “in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce”. Among other provisions, the bill would do the following:

-- Appoint four people (an appointee of the Senate, an appointee of the House, the state treasurer or a designee, and the governor or a designee) to the governing board of the agreement.

- Allow the state treasurer and the state legislature (by resolution) to withdraw the state from the agreement.
- Provide for the registration of sellers and certified service providers (i.e., agents contracted by a seller to collect and remit sales and use taxes on the sellers behalf).
- Limit the liability of registered sellers for any uncollected or non-remitted sales or use tax on transactions with resident purchasers prior to the date of registration.
- Designate four models sellers could use when collecting and remitting sales and use taxes, along with the collection allowances permitted.
- Require the department to notify registered sellers of a change in rate or tax base.
- Maintain state sovereignty with respect to provisions in the agreement.

### **House Bill 5505 - Streamlined Sales and Use Tax Revenue Equalization Act**

The bill would create the Streamlined Sales and Use Tax Revenue Equalization Act, which would “impose taxes and create credits and refundable credits to modify and equalize the impact of changes made to the General Sales Tax Act and Use Tax Act necessary to bring those taxes into compliance with the streamlined sales and use tax agreement.” The basic purpose of the act is to retain current exemptions in the sales and use tax that would be eliminated under House Bills 5502 and 5503. The taxes and credits relate to interstate motor carriers, certain motor vehicles, and aircraft. The bill would also provide a credit for assessments added to hotel and motel charges for convention and tourism marketing and development.

### **House Bill 5502 and 5503 - Use Tax Act and General Sales Tax Act Amendments**

The bills make changes to the Use Tax Act and General Sales Tax Act, respectively, necessary for the state to be in compliance with the streamlined sales and use tax agreement. Provisions common to both bills include numerous definitional changes, particularly the definition of “prepared food intended for immediate consumption”; the elimination of certain exemptions; added provisions relating to bad debt reductions; added provisions related to the “sourcing” of sales; and changing the dates on which sales and use are calculated or returned (tax filing due dates would be moved to the 20<sup>th</sup> of each month instead of the 15<sup>th</sup> of each month).

*For a more detailed description of the content of the bills, see the House Fiscal Agency’s 15-page summary of the bills as introduced, dated 3-23-04. Changes made to the bills after introduction are largely technical. They include the addition of effective dates of July 1, 2004 for House Bill 5504 and September 1, 2004 for the remaining bills.*

**BACKGROUND INFORMATION:****National Bellas Hess v. Department of Revenue of Illinois - 386 U.S. 753 (1967)**

National Bellas Hess (NBH) was a mail-order business incorporated in Delaware and principally located in Missouri. At the time, Illinois law required retailers maintaining a place of business in the state to collect and remit use taxes. National Bellas Hess did not maintain any place of business, representatives, or property in Illinois; rather, its only connection with the state was through the U.S. mail and common carrier when it sent out bi-annual catalogues and flyers to customers and potential customers located in the state. Nevertheless, it was required by the Illinois Department of Revenue (and upheld by the Illinois Supreme Court) to collect and remit use taxes to the state, as state law defined a retailer maintaining a place of business in the state to include any retailer, “[e]ngaging in soliciting orders from within this State from users by means of catalogues, or other advertising, whether such orders are received or accepted within or without this State.”

National Bellas Hess argued that Illinois law violated the Due Process Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution and the Interstate Commerce Clause of Article 1, Section 8 of the Constitution. Finding that for both clauses, the constitution requires “some definite link, some minimum connection, between a state and the person, property, or transaction it seeks to tax,” [quoting *Miller Bros. Co. v. Maryland*, 437 U.S. 267, 273 (1978)] the U.S. Supreme Court ruled that no such connection (nexus) existed in this case. Though the court, on several prior occasions, had upheld the power of the states to impose liability on an out-of-state seller to collect use taxes, there was in those cases at least some sort of nexus between the seller and the state, and the opinion said “the Court has never held that a State may impose the duty of use tax collection and payment upon a seller whose only connection with customers in the State is by common carrier or the United States mail.”

It further added, “it is difficult to conceive of commercial transactions more exclusively interstate in character than the mail order transactions here involved. And if the power of Illinois to impose use tax burdens upon National were upheld, the resulting impediments upon the free conduct of its interstate business would be neither imaginary nor remote. For if Illinois can impose such burdens, so can every other State, and so, indeed, can every municipality, every school district, and every other political subdivision throughout the Nation with power to impose sales and use taxes. The many variations in rates of tax, in allowable exemptions, and in administrative and record keeping requirements could entangle National’s interstate business in a virtual welter of complicated obligations to local jurisdiction with no legitimate claim to impose ‘a fair share of the cost of the local government.’ The very purpose of the Commerce Clause was to ensure a national economy free from such unjustifiable local entanglements. Under the Constitution, this is a domain where Congress alone has the power of regulation and control.”



**Complete Auto Transit, Inc. v. Brady - 430 U.S. 274 (1977)**

A decade after the U.S. Supreme Court's decision in *National Bellas Hess*, it convened to decide the constitutionality of a state sales tax. At issue in *Complete Auto*, was a Mississippi sales tax of five percent of gross proceeds for businesses transporting persons or property for compensation. The statute was challenged by Complete Auto Transit, Inc., a Michigan-based company that transported motor vehicles for General Motors into the state, on the grounds that it violated the Commerce Clause of the Constitution. In upholding the tax, the court held that a state tax satisfies the requirements of the Commerce Clause if it meets four criteria: (1) the tax is applied to an activity with substantial nexus with the taxing state, (2) the activity - both in and out of the state - is fairly apportioned, (3) the tax does not discriminate against interstate commerce, and (4) the tax is fairly related to services provided by the state.

**Quill Corp. v. North Dakota - 504 U.S. 98 (1992)**

The facts behind the *Quill* decision were quite similar to those 25 years earlier in *National Bellas Hess*. At the time, Quill, which sold office equipment and supplies, was incorporated in Delaware and had offices in Illinois, California, and Georgia; it had no employees working or residing in North Dakota; and it did not own tangible property in the state. It solicited customers through catalogues, flyers, advertisements, telephone calls, and delivered its merchandise to customers in North Dakota through mail or common carrier from out-of-state locations. North Dakota statute required every retailer maintaining a place of business in the state to collect and remit use taxes. Quill was required under state law to collect and remit use taxes because, under state law, "retailer" included "every person who engages in the regular and systematic solicitation of a consumer market in the state", and Quill fit that definition.

Quill challenged the constitutionality of the North Dakota law on the same grounds raised in *National Bellas Hess*. Whereas in *National Bellas Hess*, the court determined that the test to determine constitutionality under the Due Process Clause and the Commerce Clause were quite similar, it held in *Quill* that the constitutional requirements for the two clauses were quite different, even though the court has not always been precise in distinguishing between the two, and that the "clauses pose distinct limits on the taxing powers of the State." It held that a state could, in a manner consistent with the Due Process Clause, impose a tax on a particular taxpayer, even though such a tax could violate the Commerce Clause. The court recognized that its due process jurisprudence related to this matter in the years since *National Bellas Hess* had changed quite a bit. In this instance, the court backed off on its due process requirement of actual "physical presence," requiring, instead, "connections with a State [that] are substantial enough to legitimate the State's exercise of power." The court held that "there is no question that Quill has purposefully directed its activities at North Dakota residents, that the magnitude of those contacts are more than sufficient for due process purposes, and that the use tax is related to the benefits Quill receives from access to the State."

The court held that while the requirement to collect and remit use taxes did not violate the Due Process Clause, it did violate the Commerce Clause, even though its jurisprudence on it had changed somewhat in the years since *National Bellas Hess* (particularly with *Complete Auto*. Despite these changes, the court noted that *National Bellas Hess* (and its physical presence requirement) was still “good law”

The court added, “[t]his aspect of our decision is made easier by the fact that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve. No matter how we evaluate the burdens that use taxes impose on interstate commerce, Congress remains free to disagree with our conclusions...Accordingly, Congress is now free to decide whether, when, and to what extent the States may burden interstate mail-order concerns with a duty to collect use taxes.”

### **Scholastic Book Clubs v. Department of Treasury - 223 Mich App 576 (1997)**

In this case, the Michigan Court of Appeals ruled that the Department of Treasury could not require Scholastic Books Clubs to collect and remit use taxes from Michigan purchasers. The company provides catalogs for books to teachers, who then distribute them to students and place orders on behalf of their students. The department had argued that teachers essentially acted as the company’s sales force in Michigan. Relying on a similar case from Arkansas, the court of appeals ruled Michigan teachers were not sales agents for the company, but more akin to parents ordering books for their children, and no one could seriously argue that parents constituted a sales force for mail-order companies. As such, the court of appeals ruled that the company did not have a “nexus” in the state and, therefore, could not be compelled to collect and remit use taxes to the state.

### **State Use Tax Nexus Standards**

The Department of Treasury’s Revenue Administrative Bulletin (RAB) 1999-1 sets forth the state standards for determining nexus for collecting use taxes. It states that an out-of-state seller is subject the state’s use tax collection requirements when it engages in any of the following activities.

1. It has one or more employees resident or temporarily present in Michigan engaging in any activity other than those described in paragraph 7 (see below). An employee temporarily present in Michigan for two days will create nexus.
2. It owns, rents, leases, maintains, or has the right to use and uses tangible personal or real property that is permanently or temporarily physically located in Michigan.
3. Its employees own, rent, lease, or maintain an office or other place of business in Michigan.

4. It has goods delivered to Michigan in vehicles the out-of-state seller owns, rents, leases, uses, or maintains, or has goods delivered by a related party acting as a representative of the out-of-state seller.

5. Its agents, representatives, independent contractors, brokers, or others acting on its behalf, own, rent, lease, use, or maintain an office or other place of business in Michigan, and this property is used in the representation of the out-of-state seller in Michigan.

6. Its agents, representatives, independent contractors, brokers, or others acting on behalf of the out-of-state seller, are regularly and systematically present in Michigan conducting activities to establish or maintain the market for the out-of-state seller whether or not these individuals or organizations reside in Michigan.

(a) Activities that establish or maintain the market for the out-of-state seller include, but are not limited to, the following:

- i. Soliciting sales;
- ii. Making repairs or providing maintenance or service to property sold to be sold;
- iii. Collecting current or delinquent accounts, through assignment or otherwise, related to sales of tangible personal property or services;
- iv. Delivering property sold to customers;
- v. Installing or supervising installation at or after shipment or delivery;
- vi. Conducting training for employees, agents, representatives, independent contractors, brokers, or others acting on the out-of-state seller's behalf, or for customers or potential customers;
- vii. Providing customers any kind of technical assistance or service including, but not limited to, engineering assistance, design service, quality control, product inspections, or similar services;
- viii. Investigating, handling, or otherwise assisting in resolving customer complaints;
- ix. Providing consulting services; or
- x. Soliciting, negotiating, or entering into franchising, licensing, or similar agreements.

(b) Regular and systematic presence exists if at least 2 days of presence occurs in Michigan on an annual (i.e., 12-month period) basis.

(c) Lawyers, accountants, investment bankers, and other similar professionals in Michigan, who perform their customary services for an out-of-state seller in their professional capacity, shall not be considered to be establishing or maintaining the market on behalf of the out-of-state seller.

7. If none of an out-of-state seller's contacts in Michigan fall under paragraph 6(a) and its only contacts with Michigan are limited to any of the contacts listed below, such contacts will be presumed not to create nexus [except as noted in 7(h)]. If an activity is listed in

(a) though (g) below and that activity also is described under paragraph 6(a), then paragraph 6(a) controls and the out-of-state seller is subject to Michigan's use tax collection responsibility.

- (a) Meeting with in-state suppliers of goods or services;
- (b) In-state meetings with government representatives in their official capacity;
- (c) Attending occasional meetings (e.g. board meetings, retreats, seminars, and conferences sponsored by others, schools, or other training sponsored by others, etc.);
- (d) Holding recruiting or hiring events;
- (e) Advertising in the state through various media;
- (f) Renting customer lists to or from an in-state entity;
- (g) Attending a trade show at which no orders for goods are taken and no sales are made; or
- (h) Participating in a trade show at which no orders for goods are taken and no sales are made for less than 10 days cumulatively on an annual basis

***ARGUMENTS:***

***For:***

House Bill 5504, like Public Act 122 last session, is necessary to allow the state to remain an active participant in the streamlined sales tax project, an effort among the states to create a uniform and simplified system of sales and use taxes (which is typically a good thing for businesses). House Bills 5502 and 5503 make necessary amendments to the Use Tax Act and General Sales Tax Act, respectively, for the state to be in compliance with the agreement. Finally, House Bill 5505 re-writes current exemptions in the sales and use tax acts that had to be eliminated in order to remain compliant.

***For:***

It is a matter of simple fairness to Main Street, brick-and-mortar retailers that Michigan develop a method of collecting taxes on remote sales. Retailers collecting the six percent sales tax in Michigan are at a competitive disadvantage compared to out-of-state businesses that do not have to collect the similar use tax. This disparate treatment violates the principle that a tax should be efficient, as the current situation favors one form of production over the other.

***For:***

The enactment of this legislation is necessary to preserve the viability of both the sales tax and the use tax as sources of revenue. Sales and use taxes account for approximately

20 percent of the total state revenue, 12 percent of the GF/GP purpose revenue, and 44 percent of the School Aid Fund (SAF) revenue. As state residents choose to purchase goods through remote sellers that have no obligation to collect and remit use taxes to the state, the state loses out, as compliance on the part of purchasers is rather lax and strict enforcement on the part of the Department of Treasury is practically impossible. In a sense, the sales and use taxes could be considered to be a “leaky bucket,” - state tax revenue leaks out of the state’s coffers as more purchasers are made out of state, creating a situation in which sales tax is not charged and use tax is not likely to be collected. The only alternatives to increasing (or at least maintaining) current sales and use tax collections are to increase the rate or the base (include more services) of the two taxes. Neither of these options is particularly palatable to most constituent groups. The alternative, then, is to find ways to improve compliance and to improve the collection of taxes already owed to the state. This package of bills moves the state in that direction. This not a scheme to impose a new tax on consumers, nor is it an Internet tax. Rather, it merely seeks to improve current law to encourage sellers to *voluntarily* collect and remit use taxes.

***Against:***

These bills essentially are an effort to collect the estimated \$250 million to \$300 million in use tax revenue on remote sales that remains uncollected. If the state is successful in collecting even a portion of that amount, the result is money taken out of the hands of taxpayers and put into the pockets of state government. In the long run, approving this package of bills could lead to a national tax model that could raise taxes in a number of ways. It could lead to the taxing of services (in the name of standardization) or it could lead to the elimination of existing exemptions (in the name of simplification). In any case, the basic point is that this proposal is fraught with danger for taxpayers.

***Response:***

If it turns out that this proposal greatly increases state revenue, the legislature can always cut taxes, either by reducing the income tax or by lowering the rate of the sales and use taxes.

***Against:***

The kind of agreement envisioned in the bill is a blow to state sovereignty. Article IX of the State Constitution says that, "The legislature shall impose taxes . . . sufficient to pay the expenses of state government", and that "The power of taxation shall never be surrendered, suspended, or contracted away". This legislation envisions sending a small group to vote on behalf of the state's interest at multi-state conferences aimed at "streamlining" (that is, rewriting) state sales tax laws, and further envisions contracting out tax collection functions to a third party. The state could lose control over its tax laws and tax system.

***Response:***

The very constitutional language cited above from Article 9 is in fact what protects the state from having its tax laws altered without approval of the state's elected representatives. Those representing the state at the meetings of the Streamlined Sales Tax Project can make recommendations to the legislature, but changes in the state's tax system can only be made by the legislature. House Bill 5504 contains numerous (and

sometimes repetitive) provisions safeguarding state sovereignty, including portions of Section 11, which states in part, “[n]o provision of the agreement authorized by this act in whole or in part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state.”

***Against:***

Critics of the proposal say that a new multi-state tax collection system using third parties (i.e., certified service providers) raises privacy concerns. With the creation of new large repositories of information about consumers and consumer transactions, the opportunities for the increased invasion of personal privacy and identity theft expand. Some people are concerned about the growth in electronic surveillance associated with the use of personal computers to shop.

***Response:***

House Bill 5504 contains provisions regarding the safeguard of privacy of individuals. The system is supposed to be designed to protect the anonymity of consumers. One of the work groups of the project is devoted to privacy issues.

Legislative Analyst: Mark Wolf  
Fiscal Analyst: Rebecca Ross

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

**Effective date.**

Sec. 2. This act shall take effect January one, nineteen hundred thirty-six.  
Approved May 22, 1935.

[No. 76.]

AN ACT to amend section one of act number one hundred eighteen of the public acts of eighteen hundred ninety-three, entitled "An act to revise and consolidate the laws relative to the state prison, to the state house of correction, and branch of the state prison in the upper peninsula, and to the house of correction and reformatory at Ionia, and the government and discipline thereof and to repeal all acts inconsistent therewith," being section seventeen thousand five hundred forty-four of the compiled laws of nineteen hundred twenty-nine.

*The People of the State of Michigan enact:*

**Section amended.**

Section 1. Section one of act number one hundred eighteen of the public acts of eighteen hundred ninety-three, entitled "An act to revise and consolidate the laws relative to the state prison, to the state house of correction, and branch of the state prison in the upper peninsula, and to the house of correction and reformatory at Ionia, and the government and discipline thereof and to repeal all acts inconsistent therewith," being section seventeen thousand five hundred forty-four of the compiled laws of nineteen hundred twenty-nine, is hereby amended to read as follows:

17544 State penal institutions.

Sec. 1. There shall continue to be maintained in this state a state prison in the township of Blackman, in the county of Jackson; a state prison at Marquette, in the county of Marquette, and a house of correction and reformatory at Ionia, in the county of Ionia, in which persons sentenced shall be confined, employed at hard labor, and governed in the manner provided by law. The state prison in the township of Blackman, in the county of Jackson, shall be known and designated as the state prison of southern Michigan.

Approved May 22, 1935.

[No. 77.]

AN ACT to amend sections one, twenty-one and twenty-five of act number one hundred sixty-seven of the public acts of nineteen hundred thirty-three, 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; to establish a state board of tax administration; to make an appropriation for carrying out the provisions of this act; and to prescribe penalties for violations of the provisions of this act," and to add one new section to said act to stand as section four-a thereof.

*The People of the State of Michigan enact:*

**Sections amended and added.**

Section 1. Sections one, twenty-one and twenty-five of act number one hundred sixty-seven of the public acts of nineteen hundred thirty-three, en-

titled "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; to establish a state board of tax administration; to make an appropriation for carrying out the provisions of this act; and to prescribe penalties for violations of the provisions of this act," are hereby amended, and a new section is hereby added to said act to stand as section four-a thereof, said amended and added sections to read as follows:

**General sales tax act; definitions.**

Sec. 1. Definitions. That when used in this act:

(a) The term "person" includes any individual, firm, co-partnership, joint adventure, association, corporation, company, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b.1) The term "sale at retail" means any transaction by which is transferred for consideration the ownership of tangible personal property, when such transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use other than for consumption or use in industrial processing or agricultural producing, or for any other purpose than for resale in the form of tangible personal property. The term "sale at retail" includes conditional sales, installment lease sales and any other transfer of such property when the title is retained as security for the purchase price but is intended to be transferred later. The term "sale at retail" shall not include an isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof, or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of a like character by such owner or on his account by such representative.

(b.1a) The term "sale at retail" shall not include tangible personal property, commonly known as commercial advertising when produced upon special order of the purchaser.

(b.2) The term "sale at retail" includes sales of electricity for light, heat and power and sale of natural and artificial gas when made to the consumer or user for consumption or use rather than for resale.

(b.3) The provisions of subsection (b.1) of section one of this act, as amended, shall be construed as declaratory of the intention of the legislature in the enactment of act number one hundred sixty-seven of the public acts of nineteen hundred thirty-three, and the state board of tax administration shall not collect or receive any tax upon the gross proceeds of any sales not taxable under this act as amended.

(c) The term "gross proceeds" means the amount received in money, credits, property or other money's worth in consideration of sales at retail within this state, without any deduction on account of the cost of the property sold, the cost of materials used, the cost of labor or services purchased, amounts paid for interest or discounts, or any other expenses whatsoever, nor shall any deduction be allowed for losses. Credits or refunds for returned goods may be deducted.

(d) The term "business" includes all activities engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(e) The term "tax year" or "taxable year" means the fiscal year of the



state of Michigan or the taxpayer's fiscal year when permission is obtained by him from the board to use his fiscal year as the tax period in lieu thereof.

(f) The word "board" means the state board of tax administration of the state of Michigan as herein created.

(g) The word "taxpayer" means any person liable for any tax hereunder.

(h) The word "tax" shall include all taxes, interest or penalties levied under this act.

#### **Deductible sales.**

Sec. 4a. No person subject to a tax under this act need include in the amount of his gross proceeds used for the computation of the tax any sales not for resale to regularly organized churches or houses of religious worship, schools or other educational institutions, not operated for profit, or any sales to legally incorporated benevolent, charitable and scientific institutions of learning, not operated for profit, or any incorporated home, operated without profit, for the care and maintenance of children. Sales of school books and food to bona fide enrolled students made by educational organizations not operated for profit are exempt from the operation of this act.

**State board of tax administration; membership, managing director; assistants, employes, compensation, expenses.**

Sec. 21. Administration and enforcement by state board of tax administration. There is hereby created a board to be known as the state board of tax administration, and herein called "the board," whose duty it shall be to administer and provide for the enforcement of all the provisions of this act, and shall have power to make rules and regulations for the enforcement of the provisions of this act and the imposition and collection of the tax provided for herein. The board shall consist of four members who shall be the state treasurer, the auditor general, the secretary of state, and a fourth member who shall serve as the managing director of the board. The managing director shall be appointed by the governor, by and with the consent of the senate, for a term of two years. He shall devote his entire time to the business of the board and shall be responsible for the administration of the provisions of this act. The members of the board shall serve without compensation, except the managing director whose salary shall be fixed by the legislature. The board may employ such assistants, clerks, stenographers or other employees and incur such other expense as it shall deem necessary to carry out the provisions of this act. Such employees shall receive such compensation as shall be fixed by the state board of tax administration and provided for by legislative appropriation. The members of the board, and its duly authorized agents, shall be entitled to receive their necessary traveling expenses in carrying out the administration of this act. Such compensation and expenses shall be paid in the same manner as is provided by law in the case of other state officers and employees.

#### **Receipts, disposition.**

Sec. 25. All sums of money received and collected under the provisions of this act shall be deposited by the board in the state treasury to the credit of the general fund, to be disbursed only on an appropriation or appropriations by the legislature.

#### **Severing clause.**

Sec. 2. Severing clause. Each section of this act and each subsection, sentence, clause and phrase of this act, is hereby declared to be independently operative, and if any section, subsection, sentence, clause or phrase of this act shall be declared invalid by any court of competent jurisdiction, it shall not affect or invalidate the remainder of this act.

This act is ordered to take immediate effect.

Approved May 23, 1935.

10187

herein contained shall be construed to abridge the authority of the health officer in furnishing care, treatment, isolation or hospitalization to such person, pending his determination of the financial ability of such person so afflicted, but it shall be the duty of such health officer, immediately upon being apprised of any case reported to him, to extend aid and assistance to such afflicted person, and to promptly furnish such care, treatment, isolation or hospitalization as such person may require. The health officer shall present to the board of supervisors of such county an itemized statement of the expense incurred in the care, treatment, isolation or hospitalization of such person with his approval of the reasonableness of such charges. The county wherein such person afflicted with tuberculosis resides shall be charged with such charges as the board of supervisors decides are reasonable. When disputed or contested claims arise between two or more counties on account of the settlement of a person or family for the purposes of this act, it shall be the duty of the director of the state welfare department to determine and declare the county of settlement in any instance, when so requested or on the department's own volition: *Provided, however,* that pending determination by the director of the state welfare department of the county of settlement of any person afflicted with tuberculosis, the county in which such person is found shall provide necessary care, treatment, isolation or hospitalization: *And provided further,* That upon determination by the director of the state welfare department that the county wherein such person is found is not the county of his or her settlement, the county of settlement, as determined by such director, shall reimburse the county where such person is found for all expenses incurred for such care, treatment, isolation or hospitalization as the board of supervisors or board of county auditors of such county of settlement shall determine to be reasonable.

Approved June 18, 1937.

[No. 94.]

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; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act.

*The People of the State of Michigan enact:*

**Use tax act.**

Section 1. This act may be cited as the "Use Tax Act".

**Definitions.**

Sec. 2. Words and phrases when used in this act shall be defined as follows:

(a) "Person" means any individual, firm, co-partnership, joint adventure, association, corporation, company, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) "Use" means the exercise of any right or power over tangible personal property incident to the ownership of that property or by any transaction where possession is given.

(c) "Storage" means any keeping or retention in this state for any purpose after losing its interstate character.

(d) "Seller" means the person from whom a purchase is made and includes every person engaged in this state or elsewhere in the business of selling

tangible personal property for storage, use, or other consumption in this state; and when, in the opinion of the board, it is necessary for the efficient administration of this act to regard any salesman, representative, peddler or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property, sold by him for storage, use or other consumption in this state, irrespective of whether or not he is making such sales on his own behalf, or on behalf of such dealer, distributor, supervisor, or employer, the board may so regard him and may regard such dealer, distributor, supervisor, or employer as the "seller" for the purpose of this act.

(e) "Purchase" means acquired for a consideration, whether such acquisition was effected by a transfer of title, or of possession, or of both, or a license to use or consume; whether such transfer shall have been absolute or conditional, and by whatsoever means the same shall have been effected; and whether such consideration be a price or rental in money, or by way of exchange or barter.

(f) "Price" means the aggregate value in money of anything, or things, paid or delivered, or promised to be paid or delivered by a consumer to a seller in the consummation and complete performance of the transaction by which tangible personal property shall have been purchased for storage, use or other consumption in this state, without any deduction therefrom on account of the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid, or any other expense whatsoever. The tax collected by the seller from the consumer under the provisions of this act shall not be considered as a part of the price, but shall be considered as a tax collection for the benefit of the state, and no person other than the state shall derive any benefit from the collection or payment of such tax.

(g) "Consumer" means the person who shall have purchased tangible personal property for storage, use or other consumption in this state.

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

(i) "Board" means the state board of tax administration as created by act number one hundred sixty-seven of the public acts of nineteen hundred thirty-three as amended.

**3 per cent tax for privilege of using, storing or consuming tangible personal property; effective date.**

Sec. 3. There is hereby 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 after June thirty, nineteen hundred thirty-seven, which tax shall be equal to three per cent of the price of such property. For the purpose of the proper administration of this act and to prevent the evasion of the tax hereby levied, it shall be presumed that tangible personal property purchased on or after June thirty, nineteen hundred thirty-seven by any person for delivery in this state is purchased for storage, use or other consumption in this state.

**Exemptions.**

Sec. 4. The tax hereby levied shall not apply to:

(a) Property the sale of which in this state has been subjected to the tax imposed by act number one hundred sixty-seven of the public acts of nineteen hundred thirty-three as amended.

(b) Property, the storage, use, or other consumption of which, this state is prohibited from taxing under the constitution, or laws of the United States, or under the constitution of this state.

(c) Property purchased from a seller who is not engaged in the business of selling tangible personal property.

(d) Property not purchased at retail sale.

(e) Property which is brought into this state by a non-resident thereof for his own storage, use or consumption while temporarily within this state.

(f) Property the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by this act under the law of any other state of the United States: *Provided*, That if the sale or use of property has already been subjected to a tax under the law of any other state in an amount less than the tax imposed by this act, the provisions of this act shall apply, but at a rate measured by the difference only between the rate herein provided and the rate by which the previous tax was computed.

(g) Property sold to a buyer for consumption or use in industrial processing or agricultural producing.

(h) The sale of commercial advertising when produced upon special order of the purchaser.

(i) Property sold to the United States, the state of Michigan, its departments or institutions, or any of its subdivisions.

(j) Property sold to regularly organized churches or organizations for religious worship, schools, educational institutions, incorporated benevolent, charitable and scientific institutions of learning, or incorporated homes for the care and maintenance of children, none of which organizations shall be operated for profit.

(k) Property purchased for use in the state of Michigan where actual personal possession is obtained outside of the state of Michigan, the purchase price or actual value of which does not exceed ten dollars during any one calendar month.

**Registration requirements, exceptions; sellers' duty to collect tax; authority of board.**

Sec. 5. Every seller of tangible personal property for storage, use or other consumption in this state, engaged in the business of selling at retail in this state, shall, within thirty days after the effective date of this act, register with the board and give the name and address of each agent operating in this state, the location of any and all distribution or sales houses or offices, or other places of business in this state and such other information as the board may require with respect to matters pertinent to the enforcement of this act: *Provided*, That it shall not be necessary for a seller, holding a license obtained pursuant to the provisions of act number one hundred sixty-seven of the public acts of nineteen hundred thirty-three as amended, to register with the board as provided in this act. Every such seller shall collect the tax imposed by this act from the consumer and the board may, by rule or regulation, authorize any other seller to collect such tax from the consumer, and such rule or regulation shall require that each such seller shall register with the board in such form as may be therein provided.

**Monthly return, contents; payment.**

Sec. 6. Every person storing, using or consuming tangible personal property, the storage, use or consumption of which is subject to the tax imposed by this act, when such tax was not paid to a seller, and every seller collecting such tax from the purchaser, shall, on or before the fifteenth day of each calendar month file with the board a return for the preceding calendar month in such form as may be prescribed by the board, showing the price of each such purchase of tangible personal property during such preceding month, and such other information as the board may deem necessary for the proper administration of this act. At the same time each such person shall pay to the board

the amount of tax imposed by this act with respect to the purchases covered by such return. Returns shall be signed by the person liable for the tax, or his duly authorized agent and shall be verified under oath.

**Liability of consumer for tax.**

Sec. 7. Each consumer storing, using or otherwise consuming in this state tangible personal property purchased for such purpose or purposes shall be liable for the tax imposed by this act, and such liability shall not be extinguished until the tax has been paid to the board. The payment to the board of the tax, interest and any penalty assessed by the board shall relieve the seller, who sold the property with regard to the storing, use or other consumption on which the tax was paid from the payment of the amount of the tax which he may be required under this act to collect from the purchaser.

**Remittances; ultimate payment in cash.**

Sec. 8. All remittances of taxes imposed by this act shall be made to the board by bank draft, check, cashier's check, money order, certificate of deposit or money: *Provided*, That no remittance other than money shall be a final discharge of liability for the tax unless and until it has been paid in money. The board shall issue its receipt to each taxpayer.

**Personal liability of seller for failure to collect tax.**

Sec. 9. In case any seller who is required or authorized to collect the tax fails to do so, he shall be liable personally for such amount as he failed to collect. In such case, the board shall have power to make an assessment against such seller, based upon any information in, or which shall come into its possession. The board shall give to the seller written notice of such assessment. Such notice may be served upon the seller personally or by registered mail.

**Failure to make return; assessment, written notice.**

Sec. 10. If any person required by this act to make a return neglects or refuses to make such return at the time required by or under authority of this act, the board shall have power to make an assessment against such person, based upon any information in, or which shall come into its possession. The board shall give to such person written notice of such assessment. Such notice may be served upon such person personally or by registered mail.

**Penalty added to assessment, amount; petition objecting, hearing.**

Sec. 11. Any amount assessed by the board under the provisions of either of the two preceding sections, together with a penalty of twenty-five per cent thereof, shall be due and payable from the person against whom the assessment has been made to the board fifteen days after the service upon such person of notice of such assessment. Unless the person to whom such notice of assessment is directed shall within fifteen days after service thereof file a petition in writing, verified under oath by said person, or his duly authorized agent, having knowledge of the facts, setting forth with definiteness and particularity the items of said assessment objected to, together with the reason for such objections, said assessment shall become and be deemed conclusive and the amount thereof shall be due and payable from the person so assessed to the board. In every case where a petition for re-assessment as above described shall be filed, the board shall assign a time and place for the hearing thereof and shall notify the petitioner thereof by registered mail, but the board shall have the power to continue the hearing from time to time as may be necessary.

**Demand on taxpayer for payment; warrant, sale of property; authority of state to bid at sale.**

Sec. 12. If the tax imposed by this act is not paid on the date the same is required to be paid under the provisions of this act, the board, or some person

designated by it, may cause a demand to be made on the taxpayer for the payment thereof. If such tax remains unpaid for ten days after such demand has been made and no proceedings have been taken to review the same, the board may issue a warrant under the official seal of its office, directed to the sheriff of any county of the state or to any state officer authorized to serve process, commanding said sheriff or other officer to levy upon and sell the property of the taxpayer, found within his jurisdiction, for the payment of the amount thereof with the added penalties, interest and the cost of executing the warrant. Such warrant shall be returned to the board together with the money collected by virtue thereof within the time therein specified, which shall not be less than twenty nor more than ninety days from the date of the warrant. The sheriff or other officer to whom such warrant shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner. The state of Michigan, through the board or some officer or agent designated by it, is hereby authorized to bid for and purchase any property sold under the provisions hereof.

**Authority of board to bring action at law.**

Sec. 13. The board may bring an action at law to collect and recover the amount of taxes, interest and/or penalties due from any person, in addition to the other methods of collections herein provided.

**Requirements as to keeping of records, receipts, invoices, etc.; inspection.**

Sec. 14. Every seller and every person storing, using or otherwise consuming in this state tangible personal property subject to the tax imposed by this act shall keep such records, receipts, invoices, bills-of-lading and such other pertinent documents in such form as the board may require. Such records and other documents shall be open at any time during business hours to the inspection of the board, and shall be preserved for a period of three years, unless the board shall, in writing, consent to their destruction within that period, or by order require that they be kept longer.

**Penalty; failure to register.**

Sec. 15. Any seller who fails to register with the board as required under this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of twenty-five dollars for each day such failure, neglect or refusal to so register continues after notice to such seller from the board that he is required to register under this act.

**Same; failure to obey rules and regulations.**

Sec. 16. Any seller who fails, neglects or refuses to collect the full and exact tax as required by this act, or fails, neglects or refuses to comply with the provisions of this act or the rules and regulations of the board, or excepting as expressly authorized pursuant to this act, refunds, remits, or rebates to a consumer, either directly or indirectly and by whatsoever means, all or any part of the tax levied by this act, or makes in any form of advertising, verbal or otherwise, any statements which might imply he is absorbing the tax or paying the tax for the consumer by an adjustment of prices or at a price including the tax, or in any other manner whatsoever shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars, nor more than five hundred dollars and upon conviction for a second or subsequent offense shall be fined not less than five hundred dollars nor more than five thousand dollars or imprisoned in the county jail not more than one year, or by both such fine and imprisonment in the discretion of the court.

**Same; failure to make return.**

Sec. 17. Any person who refuses to make any return required under this act or who makes any false or fraudulent return or false statement in any return, with intent to defraud the payment of the tax or any part thereof imposed by this act, or who aids or abets another in any attempt to evade the payment of the tax or any part thereof as imposed by this act, or any president, vice-president, secretary or treasurer of any company who makes or permits to be made for any company or association any false return or any false statement in any return required in this act, with the intent to evade the payment of any tax hereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than one hundred dollars, nor more than five hundred dollars and upon conviction for a second or subsequent offense shall be fined not less than five hundred dollars nor more than five thousand dollars or imprisoned in the county jail not more than one year, or by both such fine and imprisonment in the discretion of the court. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury, and, on conviction thereof, shall be punished in the manner provided by law. Any person for whom a false return, or a return containing a false statement as aforesaid shall be made, shall be guilty of a misdemeanor and may be punished by a fine of not more than five thousand dollars.

**Same; failure to make payment or presentment of false certificate.**

Sec. 18. Any consumer who refuses to pay the full and exact tax as required by this act, or refuses to comply with the provisions of this act or the rules and regulations of the board, or presents to the seller a false certificate indicating that the storage, use or consumption is not subject to the tax herein imposed, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars, nor more than five hundred dollars, and upon conviction for a second or subsequent offense, shall be fined not less than five hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one year, or by both such fine and imprisonment in the discretion of the court.

**Same; in general.**

Sec. 19. Any person who violates any provisions of this act, for the violation of which no penalty is provided by law, shall be fined not less than twenty-five dollars nor more than one hundred dollars.

**Rules and regulations; employes, compensation.**

Sec. 20. The board shall have power to make rules and regulations for the enforcement of the provisions of this act, and the imposition and collection of the tax. The board may employ such assistants, clerks, stenographers or other employes and incur such other expense as it shall deem necessary to carry out the provisions of this act. Such employes shall receive such compensation as shall be fixed by the board and provided for by legislative appropriation.

**Deposit of receipts in state treasury.**

Sec. 21. All monies received and collected under the provisions of this act shall be deposited by the board, not later than thirty days after the receipt thereof, in the state treasury to the credit of the general fund, to be disbursed only by appropriations by the legislature.

**Severing clause.**

Sec. 22. Each section of this act and each subsection, sentence, clause and phrase of this act, is hereby declared to be independently operative, and if

any section, subsection, sentence, clause or phrase of this act shall be declared invalid by any court of competent jurisdiction, it shall not affect or invalidate the remainder of this act.

Approved June 18, 1937.

Attorney general in opinion dated July 7, 1937, ruled the above act not effective until October 29, 1937, and then cannot legally operate retrospectively.

[No. 95.]

AN ACT to amend sections five and eight of act number two hundred ten of the public acts of nineteen hundred thirty-five, entitled "An act to provide for the employment of prison labor in the penal institutions of this state; to establish a state use system of prison industries; to define the powers and duties of the prison commission, the governor and other officers and employes in relation thereto, and to provide for the abolition of certain employe positions; to provide for the requisitioning and disbursement of prison products; to provide for the sale and/or purchase of certain prison equipment; to create a revolving fund and otherwise provide for the disposition of the proceeds of said industry; to provide for purchasing and accounting procedures; to prohibit the sale, exchange or other distribution of prison products made in or transported into this state, except as herein provided; to provide for the requisitioning and/or purchase and supply of prison products for use or consumption by certain institutions and departments; to provide penalties for violations of this act; and to repeal certain acts and parts of acts."

*The People of the State of Michigan enact:*

**Sections amended.**

Section 1. Sections five and eight of act number two hundred ten of the public acts of nineteen hundred thirty-five, entitled "An act to provide for the employment of prison labor in the penal institutions of this state; to establish a state use system of prison industries; to define the powers and duties of the prison commission, the governor and other officers and employes in relation thereto, and to provide for the abolition of certain employe positions; to provide for the requisitioning and disbursement of prison products; to provide for the sale and/or purchase of certain prison equipment; to create a revolving fund and otherwise provide for the disposition of the proceeds of said industry; to provide for purchasing and accounting procedures; to prohibit the sale, exchange or other distribution of prison products made in or transported into this state, except as herein provided; to provide for the requisitioning and/or purchase and supply of prison products for use or consumption by certain institutions and departments; to provide penalties for violations of this act; and to repeal certain acts and parts of acts," are hereby amended to read as follows:

**Unlawful sales of prison products; exceptions.**

Sec. 5. From and after sixty days after this act shall become law it shall be unlawful to sell or exchange or to offer for sale or exchange, or to purchase any prison products, except animals and livestock raised on the several prison farms, otherwise than for use or consumption in the penal, charitable and/or other custodial institutions of this state or for departments of this state or counties or political subdivisions of this state or otherwise as specifically provided in this act; nor shall the labor of prisoners be sold, hired, leased, loaned, contracted for or otherwise used for private or corporate profit or for any



offense of perjury, and, on conviction thereof, shall be punished in the manner provided by law.

Any person who shall engage in any business in this state which is taxable under this act and who shall fail to secure from the department a license to engage in such business, as required in this act, or who shall continue to engage in business after his license so to do shall have expired or have been suspended by the department, shall be guilty of a misdemeanor, the punishment for which shall be a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both such fine and imprisonment.

The department shall have power, after hearing, to suspend the license of any person who shall violate or fail to comply with any provisions of this act or any rule or regulation adopted by the department pursuant thereto. The department shall have power to restore licenses after suspension. If any person shall engage in business taxable under this act while his license is in suspension, the tax imposed with respect thereto shall nevertheless be imposed and be payable with respect to such business.

**205.75 General fund; appropriation. [M.S.A. 7.546]**

Sec. 25. All sums of money received and collected under the provisions of this act shall be deposited by the department in the state treasury to the credit of the general fund, to be disbursed only on an appropriation or appropriations by the legislature.

**Section repealed.**

Section 2. Section 26 of Act No. 167 of the Public Acts of 1933, being section 205.76 of the Compiled Laws of 1948, is hereby repealed.

**Effective date.**

Section 3. This amendatory act shall take effect on and after July 1, 1949.

This act is ordered to take immediate effect.

Approved June 7, 1949.

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[No. 273.]

AN ACT to amend sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, and 21 of Act No. 94 of the Public Acts of 1937, 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; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," as amended, being sections 205.92, 205.93, 205.94, 205.95, 205.96, 205.97, 205.98, 205.99, 205.100, 205.101, 205.102, 205.103, 205.104, 205.105, 205.106, 205.107, 205.108, 205.110 and 205.111, respectively, of the Compiled Laws of 1948.

*The People of the State of Michigan enact:*

**Sections amended.**

Section 1. Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20 and 21 of Act No. 94 of the Public Acts of 1937, as amended, being sections 205.92, 205.93, 205.94, 205.95, 205.96, 205.97, 205.98, 205.99, 205.100, 205.101, 205.102, 205.103, 205.104, 205.105, 205.106, 205.107, 205.108, 205.110 and 205.111, respectively, of the Compiled Laws of 1948, are hereby amended to read as follows:

**205.92 Use tax act; definitions. [M.S.A. 7.555(2)]**

Sec. 2. Words and phrases when used in this act shall be defined as follows:

(a) The term "person" includes any individual, firm, co-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, state of Michigan, county, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) "Use" means the exercise of any right or power over tangible personal property incident to the ownership of that property including transfer thereof in any transaction where possession is given.

(c) "Storage" means any keeping or retention in this state for any purpose after losing its interstate character.

(d) "Seller" means the person from whom a purchase is made and includes every person selling tangible personal property for storage, use, or other consumption in this state; and when, in the opinion of the department, it is necessary for the efficient administration of this act to regard any salesman, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom such person operates or from whom he obtains tangible personal property, sold by him for storage, use or other consumption in this state, irrespective of whether or not he is making such sales on his own behalf, or on behalf of such dealer, distributor, supervisor, or employer, the department may so regard him and may regard such dealer, distributor, supervisor, or employer as the "seller" for the purpose of this act.

(e) "Purchase" means acquired for a consideration, whether such acquisition was effected by a transfer of title, or of possession, or of both, or a license to use or consume; whether such transfer shall have been absolute or conditional, and by whatsoever means the same shall have been effected; and whether such consideration be a price or rental in money, or by way of exchange or barter.

(f) "Price" means the aggregate value in money of any thing, or things, paid or delivered, or promised to be paid or delivered by a consumer to a seller in the consummation and complete performance of the transaction by which tangible personal property shall have been purchased for storage, use or other consumption in this state, without any deduction therefrom on account of the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid, or any other expense whatsoever. The tax collected by the seller from the consumer under the provisions of this act shall not be considered as a part of the price, but shall be considered as a tax collection for the benefit of the state, and no person other than the state shall derive any benefit from the collection or payment of such tax.

(g) "Consumer" means the person who shall have purchased tangible personal property for storage, use or other consumption in this state and shall include a person acquiring tangible personal property when engaged in the business of constructing, altering, repairing or improving the real estate of others.

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

(i) "Department" means the department of revenue of the state of Michigan.

(j) The word "tax" shall include all taxes, interest or penalties levied under this act.

#### 205.93 Tax for privilege of using, storing or consuming tangible personal property. [M.S.A. 7.555(3)]

Sec. 3. There is hereby 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 after June 30, 1937, which tax shall be equal to 3 per cent of the price of such property, and to such tax there shall be added penalties and interest where applicable as hereinafter provided. For the purpose of the proper administration of this act and to prevent the evasion of the tax hereby levied, it shall be presumed that tangible personal property purchased on or after June 30, 1937 by any person for delivery in this state is purchased for storage, use or other consumption in this state.

#### 205.94 Same; exemptions. [M.S.A. 7.555(4)]

Sec. 4. The tax hereby levied shall not apply to:

(a) Property sold in this state on which transaction a tax has been paid under the provisions of Act No. 167 of the Public Acts of 1933, as amended.

(b) Property, the storage, use, or other consumption of which, this state is prohibited from taxing under the constitution, or laws of the United States, or under the constitution of this state.

(c) Property purchased for resale.

(d) Property which is brought into this state by a non-resident person thereof for storage, use or consumption while temporarily within this state, except when such property is used in this state in a non-transitory business activity for a period exceeding 15 days.

(e) Property the sale or use of which has already been subjected to a sales tax or use tax equal to or in excess of that imposed by this act under the law of any other state of the United States: Provided, That if the sale or use of property has already been subjected to a tax under the law of any other state in an amount less than the tax imposed by this act, the provisions of this act shall apply, but at a rate measured by the difference only between the rate herein provided and the rate by which the previous tax was computed.

(f) Property sold to persons engaged in or having an interest in, as a business enterprise and using and consuming such property in the tilling, planting, caring for and/or harvesting of the things of the soil, in the breeding, raising or caring for livestock and/or poultry or horticultural products, including transfers of livestock and/or poultry or horticultural products for further growth: Provided, That in all such cases, at the time of the transfer of the tangible personal property, the transferee shall sign a statement, in a form approved by the department of revenue, stating that such property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise. Such statement shall be accepted by all courts as prima facie evidence of the exemption: Provided further, That this exemption shall not be construed to include transfers of food, fuel, clothing or any similar tangible personal property for personal living or human consumption: Provided further, That this exemption shall not be deemed to include tangible personal property permanently affixed and becoming a structural part of real estate.

(g) Property sold to persons for use or consumption in industrial processing: Provided, That the term "industrial processing" shall not be deemed to include tangible personal property permanently affixed and becoming a structural part of real estate.

(h) Property known as sales catalogs, sales price lists, sales pamphlets and hand bills, commonly known as commercial advertising, when produced upon special order of the purchaser.

(i) Property sold to the United States, its unincorporated agencies and instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters and branches, the state of Michigan, its departments or institutions, or any of its political subdivisions.

(j) Property sold to schools or other educational institutions, hospitals and homes for the care and maintenance of children or aged persons when such schools, institutions, hospitals and homes are not operated for profit: Provided, however, That the term "not operated for profit" as used in this section, shall mean when operated by an entity of government, a regularly organized church, religious or fraternal organization and when the income from the operation does not inure in whole or in part to the benefit of any individuals or private shareholders, directly or indirectly.

(k) Property sold to regularly organized churches or houses of religious worship excepting when such property is used in activities as are mainly commercial enterprises.

(l) Vessels designed for commercial use of registered tonnage of 500 tons or more, when produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance and repairs for the exclusive use of vessels of 500 tons or more engaged in interstate commerce.

(m) Property purchased by persons engaged in the business of constructing, altering, repairing, or improving real estate for others when property so purchased by such persons shall be affixed and made a structural part of real estate in the fulfillment of a contract within the exempt classifications set forth in subsections (b), (i), (j) and (k) of this section.

(n) Property purchased for use in the state of Michigan where actual personal possession is obtained outside the state of Michigan, the purchase price or actual value of which does not exceed \$10.00 during any 1 calendar month.

**205.95 Registration requirements, exceptions; seller to collect tax; corporations. [M.S.A. 7.555(5)]**

Sec. 5. (a) Every person when engaged in the business of selling tangible personal property for storage, use or other consumption in this state, shall, within 30 days after the effective date of this act, register with the department and give the name and address of each agent operating in this state, the location of any and all distribution or sales houses or offices, or other places of business in this state and such other information as the department may require with respect to matters pertinent to the enforcement of this act: Provided, That it shall not be necessary for a seller, holding a license obtained pursuant to the provisions of Act No. 167 of the Public Acts of 1933 as amended, to register with the department as provided in this act. Every such seller shall collect the tax imposed by this act from the consumer.

(b) The corporation and securities commission shall not issue to any foreign corporation engaged in the business of selling tangible personal property 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 such corporation to conduct any business of selling of tangible personal property unless such corporations shall submit with an application for said certificate of authority or proposed articles of incorporation, an application for registration of said corporation under the provisions of this act, or an application for license under the provisions of Act No. 167 of the Public Acts of 1933 as amended, which application shall be transmitted to the department by said corporation and securities commission.

The corporation and securities commission shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state or organized under the laws of another state and admitted to do business in this state until the receipt of a notice from the department to the effect that all taxes levied under this act against any such corporation have been paid, or until it shall be notified by the department that the applicant is not indebted for any taxes levied hereunder.

**205.96 Monthly return, contents; payment. [M.S.A. 7.555(6)]**

Sec. 6. Every person storing, using or consuming tangible personal property, the storage, use or consumption of which is subject to the tax imposed by this act, when such tax was not paid to a seller, and every seller collecting such tax from the purchaser, shall, on or before the fifteenth day of each calendar month file with the department a return for the preceding calendar month in such form as may be prescribed by the department, showing the price of each such purchase of tangible personal property during such preceding month, and such other information as the department may deem necessary for the proper administration of this act. At the same time each such person shall pay to the department the amount of tax imposed by this act with respect to the purchases covered by such return. Returns shall be signed by the person liable for the tax, or his duly authorized agent if the return is prepared by any person other than the taxpayer, said return shall also be signed by such person and show his address.

**205.97 Liability of consumer for tax. [M.S.A. 7.555(7)]**

Sec. 7. Each consumer storing, using or otherwise consuming in this state tangible personal property purchased for or subsequently converted to such purpose or purposes shall be liable for the tax imposed by this act, and such liability shall not be extinguished until the tax has been paid to the department. The payment to the department of the tax, interest and any penalty assessed by the department shall relieve the seller, who sold the property with regard to the storing, use or other consumption on which the tax was paid from the payment of the amount of the tax which he may be required under this act to collect from the purchaser.

**205.98 Remittances; ultimate payment in cash. [M.S.A. 7.555(8)]**

Sec. 8. All remittances of taxes imposed by this act shall be made to the department by bank draft, check, cashier's check, money order, certificate of deposit or money: Pro-

vided, That no remittance other than money shall be a final discharge of liability for the tax unless and until it has been paid in money.

**205.99 Personal liability of seller for failure to collect tax. [M.S.A. 7.555(9)]**

Sec. 9. In case any seller who is required or authorized to collect the tax fails to do so, he shall be liable personally for such amount as he failed to collect together with penalty and interest thereon. In such case, the department shall have power to make an assessment against such seller, based upon any information in, or which shall come into its possession. The department shall give to the seller written notice of such assessment. Such notice may be served upon the seller personally or by registered mail, addressed to his last known or business address.

**205.100 Failure to make return; assessment; written notice; penalty; examination; added penalties, not waived; time limit. [M.S.A. 7.555(10)]**

Sec. 10. If any person required by this act to make a return neglects or refuses to make such return at the time required by or under authority of this act, the department shall have power to make an assessment against such person, based upon any information in, or which shall come into its possession. The department shall give to such person written notice of such assessment. Such notice may be served upon such person personally or by registered mail, addressed to his last known or business address. The tax so determined shall be assessed, together with a penalty of 25 per cent of the tax, or the sum of \$2.00, whichever amount is greater.

As soon as practicable after each return is filed the department shall examine it. If it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed and the correct tax determined. If the amount paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid may be credited without interest against a subsequent tax or such amount may be refunded if requested by the taxpayer.

If the amount paid is less than the amount which should have been paid, the deficiency, together with interest thereon at the rate of  $\frac{1}{2}$  of 1 percent per month from the time the tax was due, shall become due and payable after notice and hearing as herein provided.

If any part of the deficiency resulting from such examination is due to negligent or intentional disregard of this act or of authorized rules and regulations of the department, but without intent to defraud, there shall be added as a penalty 10 per cent of the total amount of the deficiency in the tax, and interest shall be collected at the rate of 1 per cent per month on the amount of such deficiency in the tax from the time it was due, which tax, interest and penalty shall become due and payable after notice and hearing as hereinafter provided.

If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty 100 per cent of such deficiency and, in such case, the whole amount of tax unpaid, together with this penalty, shall become due and payable after notice and hearing as hereinafter provided, and an additional 1 per cent per month on the tax shall be added from the date such tax was due until paid.

Penalties and interest as provided herein for fraudulent intent to evade the tax shall not be waived by the department.

Whenever notice is required under the provisions of this act, such notice shall be given either by personal service or by registered mail addressed to the last known address of the taxpayer.

No deficiency, interest or penalty shall be assessed for any year after the expiration of 6 years from the thirtieth day of June for such year, nor shall the taxpayer claim refund of any amount paid by him to the department after the expiration of 3 years from the date of payment thereof: Provided, however, That no taxpayer shall assign his claim against the state to any other person: Provided further, That if any person subject to tax under this act shall fraudulently conceal any liability for the tax or any part thereof, the department shall, upon discovery of such fraud and within 2 years

thereafter, proceed to assess such tax with penalties and interest as hereinbefore provided, computed from the date on which such tax liability originally accrued and such tax, penalties and interest shall become due and payable after notice and hearing as herein-after provided, anything herein contained to the contrary notwithstanding.

**205.101 Assessment, date due and payable; petition objecting, hearing.**  
[M.S.A. 7.555(11)]

Sec. 11. Any tax together with interest and penalty thereon assessed by the department under the provisions of either of the 2 preceding sections, shall be due and payable from the person against whom the assessment has been made to the department 20 days after the service upon such person of notice of such assessment. Unless the person to whom such notice of assessment is directed shall within 20 days after service thereof file a petition in writing, signed by said person, or his duly authorized agent, having knowledge of the facts, setting forth with definiteness and particularity the items of said assessment objected to, together with the reason for such objections, said assessment shall become and be deemed conclusive and the amount thereof shall be due and payable from the person so assessed to the department. In every case where a petition for reassessment as above described shall be filed, the department shall assign a time and place for the hearing thereof and shall notify the petitioner thereof by registered mail, but the department shall have the power to continue the hearing from time to time as may be necessary.

**205.102 Demand on taxpayer for payment; warrant, sale of property; state bid; action to recover.** [M.S.A. 7.555(12)]

Sec. 12. If the tax imposed by this act is not paid on the date the same is required to be paid under the provisions of this act, the department, or some person designated by it, may cause a demand to be made on the taxpayer for the payment thereof. If such tax remains unpaid for 10 days after such demand has been made and no proceedings have been taken to review the same, the tax shall become final and payable and the department may issue a warrant under the official seal of its office, directed to the sheriff of any county of the state or to any state officer authorized to serve process, commanding said sheriff or other officer to levy upon and sell the property of the taxpayer, found within his jurisdiction, for the payment of the amount thereof with the added penalties, interest and the cost of executing the warrant. Such warrant shall be returned to the department together with the money collected by virtue thereof within the time therein specified, which shall not be less than 20 nor more than 90 days from the date of the warrant. The sheriff or other officer to whom such warrant shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner. The state of Michigan, through the department or some officer or agent designated by it, is hereby authorized to bid for and purchase any property sold under the provisions hereof.

In addition to the mode of collection provided herein, the department may bring an action at law in the county in which the business or any part thereof is carried on, to collect and recover the amount of taxes, interest and penalties claimed to be due from any taxpayer.

**205.103 Member, etc., of department not to divulge facts or information; exception.** [M.S.A. 7.555(13)]

Sec. 13. Unless in accordance with a judicial order, or as shall be required in the proper administration of this act, no member of the department, or agent or employee thereof, or former member, agent or employee, shall divulge any facts or information obtained in connection with the administration of this act: Provided, however, That all tax conferences or hearings concerning a notice of intent to assess, the assessment, or claims for the reduction thereof and any decision or determination thereon shall be open to the public.

**205.104 Inventory and records kept, period; contents; sale to unlicensed person; return; assessment; burden of proof on taxpayer. [M.S.A. 7.555(14)]**

Sec. 14. Every person in the business of selling tangible personal property and liable for any tax imposed under this act shall keep an accurate and complete beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading and any and all pertinent documents in such form as the department may require and wherever an exemption from this tax is claimed by reason of any of the exemptions or deductions granted under this act, there shall be a record kept of the name and address of the person to whom the sale is made, the date of the sale, the article purchased, the use to be made of the article, the amount of the sale and if that person has a sales tax license issued under the provisions of Act No. 167 of the Public Acts of 1933, as amended, that number shall also be noted thereon. Any person knowingly making a sale of tangible personal property to another not licensed under Act No. 167 of the Public Acts of 1933, as amended, for the purpose of resale at retail, shall be liable for the tax imposed by this act. Such records must be kept for the 6-year period as stated in section 10 hereof. Whenever in the judgment of the department it is necessary, it may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the department deems sufficient to show whether or not such person is liable to tax under this act. In the event the taxpayer fails to file a return or to maintain or preserve proper records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department shall be empowered to assess, upon such information as is available or may come into possession of the department, the amount of the tax due from the taxpayer. Such assessment, after notice and hearing as hereinafter provided, shall be deemed to be prima facie correct for the purpose of this act and the burden of proof of refuting such assessment shall be upon the taxpayer.

**205.105 Penalty; failure to register. [M.S.A. 7.555(15)]**

Sec. 15. Any seller who fails to register with the department as required under this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of \$25.00 for each day such failure, neglect or refusal to so register continues after notice to such seller from the department that he is required to register under this act.

**205.106 Same; failure to comply with provisions of act. [M.S.A. 7.555(16)]**

Sec. 16. Any seller who fails, neglects or refuses to collect the full and exact tax as required by this act, or fails, neglects or refuses to comply with the provisions of this act, or excepting as expressly authorized pursuant to this act, refunds, remits, or rebates to a consumer, either directly or indirectly and by whatsoever means, all or any part of the tax levied by this act, or makes in any form of advertising, verbal or otherwise, any statements which might imply he is absorbing the tax or paying the tax for the consumer by an adjustment of prices or at a price including the tax, or in any other manner whatsoever shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$100.00, nor more than \$500.00 and upon conviction for a second or subsequent offense shall be fined not less than \$500.00 nor more than \$5,000.00 or imprisoned in the county jail not more than 1 year, or by both such fine and imprisonment in the discretion of the court.

**205.107 Same; failure to make return. [M.S.A. 7.555(17)]**

Sec. 17. Any person who fails or refuses to make any return required under this act or who makes any false or fraudulent return or false statement in any return, with intent to defraud the state or evade payment of the tax or any part thereof imposed by this act, or who aids or abets another in any attempt to evade the payment of the tax or any part thereof as imposed by this act, or any person or president, vice-president, secretary or treasurer of any company or association who makes or permits to be made for any person, company or association any false return or any false statement in any

return required in this act, with the intent to evade or assist in evading the payment of any tax hereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than \$500.00 nor more than \$5,000.00 or imprisoned in the county jail not more than 1 year, or by both such fine and imprisonment in the discretion of the court. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement, with the intent to defraud or to aid, abet or assist in defrauding the state, shall be guilty of the offense of perjury, and, on conviction thereof, shall be punished in the manner provided by law.

**205.108 Same; failure to make payment or presentment of false certificate. [M.S.A. 7.555(18)]**

Sec. 18. Any consumer who refuses to pay the full and exact tax as required by this act, or refuses to comply with the provisions of this act, or makes to the seller a false statement or certificate indicating that the storage, use or consumption is not subject to the tax herein imposed, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500.00 nor more than \$5,000.00, or imprisoned in the county jail not more than 1 year, or by both such fine and imprisonment in the discretion of the court.

**205.110 Jeopardy assessment; warrant. [M.S.A. 7.555(20)]**

Sec. 20. If the department finds that a person liable for tax under any of the provisions of this act designs quickly to depart from the state or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act to prejudice or to render wholly or partly ineffectual proceedings to collect such tax unless such proceedings be brought without delay, the department shall cause notice of such finding to be given such person, together with a demand for an immediate return and immediate payment of such tax. Warrant may issue immediately upon issuance of such jeopardy assessments. Thereupon such tax shall become immediately due and payable. If such person (1) is not in default in making any return or paying any tax prescribed by this act, and (2) furnishes evidence satisfactory to the department that he will duly return and pay the tax to which the department's findings relate, then such tax shall not be payable prior to the time otherwise fixed for payment.

**205.111 Deposit of receipts in state treasury. [M.S.A. 7.555(21)]**

Sec. 21. All moneys received and collected under the provisions of this act shall be deposited by the department, in the state treasury to the credit of the general fund, to be disbursed only by appropriations by the legislature.

**Effective date.**

Section 2. This amendatory act shall take effect on and after July 1, 1949.

This act is ordered to take immediate effect.

Approved June 7, 1949.

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[No. 274.]

AN ACT to authorize the construction of camps for inmates of state prisons on state-owned lands within conservation areas, to authorize the use of inmate labor on conservation projects on state-owned lands, and to make an appropriation therefor.

*The People of the State of Michigan enact:*

**798.351 Camps for inmates of state prisons; purpose. [M.S.A. 28.1715]**

Sec. 1. In order to facilitate the rehabilitation of inmates of state prisons and to provide inmate labor for conservation projects on state-owned lands, the corrections department and the conservation department are hereby authorized to construct on state-owned lands within conservation areas camps for the purpose of housing prison inmates who shall



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## TOWARD RATIONALITY IN A RETAIL SALES TAX

MILTON C. TAYLOR \*

PROFESSOR JOHN F. DUE in a recent article<sup>1</sup> has sounded a call for research which will produce a rational foundation for the retail sales tax. He points out that although the tax was born of expediency in the depressed thirties it has now assumed both a status of fiscal importance and apparent permanency at the state level of taxation. Despite its present status and despite serious incongruities, many of the levies continue to exist in their virgin form of adoption. The purpose of this paper is to substantiate by way of illustration the need for fundamental theoretical analysis of the sales tax by considering in historical perspective one aspect of the tax as it has evolved in Michigan, a generally typical sales tax state.

One of the most difficult and important problems to be faced in both the process of legislating and administering a sales tax is the determination of the taxable base. At least two significant problems arise in this regard: (1) What does the legislature in its statutory directive intend to be taxed? (2) In terms of rationality, neutrality, administrative enforceability, and other requirements of a good tax, what *should*

be the base of the tax, in the event that there is a variance between the legislature's intent and a desirable tax structure?

The Michigan legislature, in its original act, defined the tax base as follows:

The term 'sale at retail' means any transaction by which is transferred for consideration the ownership of tangible personal property, when such 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 other purpose than for resale in the form of tangible personal property.<sup>2</sup>

It should be noted first, from the above statutory requirement, that the legislature intended to tax only the sale of tangible personal goods. The tax was levied on only one of the four categories of wealth; it was not a tax on land, improvements, or intangible personal property. And it should also be noted that the tax base excluded services. Property, to be taxable when transferred, was required to be both personal and tangible. The second specification was that the sale must be consummated in the ordinary course of the transferor's business—in other words, not a casual sale. And lastly, it was stipulated that the tax was only to be imposed on goods that were sold for use or consumption; goods purchased for resale were specifically exempted.

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<sup>1</sup> J. F. Due, "Retail Sales Taxation in Theory and Practice," *National Tax Journal*, III (1950), pp. 314-325.

<sup>2</sup> Public Acts, 1933, No. 167, sec. 1 (b.1).

This last requirement is of major importance. It would appear, at least by the legislature's original directive, that the tax was not intended as a levy on retail sales *per se*, that is, sales to over-the-counter consumers; rather, it was a tax on the sale of all goods which were intended for use or consumption, regardless of who used them, business or ultimate consumers. It is possible, although this is a matter of speculation, that this aspect of the tax is still commonly misunderstood by the public in Michigan, even though the tax has been in operation for nearly twenty years. In other words, it is possible that non-business consumers are misled by the term "retail" sales tax and by their personal experience of paying the tax. In a similar vein, it is possible that consumers in Michigan commonly believe, because of the separation of the tax from the price of the product, that they have a legal obligation to pay the tax.

Since the tax was designed as a levy on the transfer of goods, provided that the purchaser used or consumed them, it may be observed that a distinction between goods sold by a manufacturer, wholesaler, or retailer was irrelevant. Nor was it pertinent to consider whether the goods were purchased by a manufacturer, wholesaler, or retailer. The only relevant question was whether the goods were purchased for consumption or use, and the determination of exemption is turned on the question of whether the goods were not consumed, that is, purchased for resale.

A tax of this kind is, therefore, in large part, a multilevel rather than a single-stage levy, and is subject in some considerable measure to the inadequacies of a multilevel tax. Dominant among these are two types of tax accumulation:

pyramiding of the tax which occurs when the levy is assessed at the manufacturing level and/or some other level of production anterior in time to the retail level; and pyramiding which occurs when fixed percentage markups are a characteristic mode of pricing. With these two conditions, the base for the markup includes the tax, with the dual result that a profit is made by the producers on the tax itself, and the tax undergoes a cumulative build-up by the time it reaches the retail level. Accumulation may occur even in the absence of fixed percentage markups. Whenever there is a multilevel tax, some shifting of the tax paid by producers is customarily presumed, with the result that the ultimate consumer may pay more than the statutory rate. It should be noted that these two features are undesirable, since they cause discrimination among particular consumers and producers; and both are avoidable in a retail, over-the-counter type of sales tax. At the same time it should be mentioned that these features of tax accumulation were inherent in the Michigan sales tax because of the legislature's definition of a retail sale, rather than by any administrative action or judicial decree.

The obvious question which may be raised at this point is: Why could not these difficulties be obviated by the simple expedient of taxing exclusively at the individual, nonbusiness, consumer level, with an exemption of all sales to business? And the equally obvious answer is the probability of extensive evasion. Such a provision would mean that all business purchases of radios, automobiles, fuel, typewriters, and so forth, would be exempt for business consumers, but, on the other hand, would

be taxable to nonbusiness consumers. And since in large measure there is very little qualitative difference between business and nonbusiness consumption, the apprehension with regard to widespread evasion under a single-level, over-the-counter tax with a general business exemption is substantially realistic. The old cliché of "I can get it for you wholesale" would be changed to "I can get it for you tax free."

One solution to this problem is to levy a tax on the transfer of tangible personal property to *all* consumers, both business and nonbusiness, or to have a multilevel tax, but to ease the effect of tax accumulation by exempting sales for resale. Although at best this solution is only an imperfect compromise, it raises, in addition, difficult problems of definition. At the outset, there is the question whether "sales for resale" should include both goods which change their form before being sold, as well as goods which are not physically altered in any way. Because the original act in Michigan was silent on this point, the administrative officers were immediately pressed into the adoption of a working rule. Their first determination, which appeared in the *Preliminary Regulations* of June 30, 1933, held that both of the above categories of goods were exempt; for example, steel purchased for ultimate use in the manufacture of an automobile was construed to be a product purchased for resale. And in order to implement this decision, the administrative officers adopted what is commonly referred to in sales tax literature as the physical ingredient rule: if purchased goods become a physical ingredient in products ultimately resold, such goods are exempt from the sales tax.

The physical ingredient rule is a workable administrative device, but it also raises some difficult administrative problems. There is, for example, a rather nebulous middle ground involving such products as catalytic agents, medicines, and containers, in which there is some question as to whether the goods become a component part of the end product. Other goods also have a dual purpose; coal, for example, may be used for both the production of heat and coke. But, in retrospect, these are rather minor difficulties which merely loomed large in the early years of the administration of the act.

In Michigan the objections raised by organized farm groups and manufacturers were a much more important development of the adoption of the ingredient rule than these administrative problems. With the adoption of the ingredient rule both groups were rudely awakened to a new burden of taxation as they found that a considerable portion of their costs, most significantly equipment and fuel, was subject to the sales tax.

Apparently at the behest of these two groups, the legislature, only eighteen days after the first administrative ruling with regard to sales for resale, hurriedly reconvened and passed House Concurrent Resolution No. 96, which reads in part as follows:

Resolved that it was the intent of the legislature that the State board of tax administration be empowered and authorized by said act to define and liberalize the definition of a sale at retail; and . . .

Resolved, that the legislative intent, in passing Act No. 167, Pub. Acts 1933, was to exclude from the provisions of the act any sale of anything used exclusively in the

manufacturing, assembling, producing, preparing, or wrapping, crating, and/or otherwise preparing for delivery any tangible personal property to be sold; and be it further

Resolved, that the word "producing" as used herein shall include agricultural production.

It should be noted, in view of the generality in the language, that the resolution said "*liberalize*," but on the other hand, the exemption is held to be applicable to "anything used exclusively in the manufacturing, assembling, producing, preparing, or wrapping, crating, and/or otherwise preparing for delivery any tangible personal property to be sold . . ." The directive "*liberalize*" apparently implied that the business exemption should be broadened, but the degree to which it should be extended was left indeterminate by the vagueness in the language which defined the exemption. In particular, it was hardly possible to determine whether the exemption was intended to include sales to wholesalers and retailers, as well as to agricultural producers and manufacturers. If only the latter, it was equally difficult to determine whether the exemption was intended to be all-inclusive, or selective in some measure.

The immediate response of the Board of Tax Administration was to ignore the resolution; two days after the legislative promulgation was announced, supplementary regulations were issued, but the pertinent provisions merely redefined and made more explicit the ingredient rule. In the following six weeks apparently some pressure (it was less likely a process of education) was brought to bear on the administrative officers and, consequently, on August 30, 1933, the Board of Tax Administration revised its regulations to comply

with the "clear" intent of the legislature. When the preceding argument with regard to administrative feasibility of a general exemption is borne in mind, the new regulation was quite unexpected, for it held that *all* sales to business were exempt without qualification. This broad interpretation, in turn, was short lived for on September 25 the Attorney General ruled that the ingredient principle had to be followed. The Board immediately rescinded its new regulation.

The legislature, apparently dissatisfied with these developments, reconvened on December 20, 1933. One can easily imagine the reason for its dissatisfaction, since House Concurrent Resolution No. 96 had been ostensibly passed in order to "*liberalize*" the ingredients rule, and this mandate had not reached fruition. One can also presume, in the face of the developments, that the purpose of reconvening would be to make more explicit the original legislative intention. Consequently, it is surprising to find that the members merely reiterated their previous ambiguity:

That the legislature hereby requests the State board of tax administration to abide by the legislative intent relative to Act No. 167 Pub. Acts 1933, as contained in house concurrent resolution No. 98 of the 1933 session of the legislature.

It is quite obvious now and must have been at the time of this difficulty, that the administrative officers did not know what the legislative body wanted, except that it was desirous of some kind of business exemption. The Board of Tax Administration had adopted the ingredient rule, but the legislature had objected; then the Board had exempted

all business purchases, and the Attorney General had intervened; and when the ingredient rule was re-established, the legislature objected again. Apparently frustrated, and not knowing what to do, the administrative officers retained the ingredient rule, probably with the intention of waiting until the legislature would resolve the problem.

It was at this point in the developments that the problem came before the Michigan Supreme Court in the case of *Boyer-Campbell v. Fry*.<sup>3</sup> Or perhaps more properly it should be said that the wholesalers of Michigan came to Court, for some twenty-five of the more important firms leagued together to present their case. The theme of the plaintiffs is a well-known one: the sales tax thus construed (with only an exemption for resale) will cause great and irreparable injury to business interests, and will result in discrimination close to economic disaster; such a tax will not destroy business, but it will drive it out of the state; wholesalers only have a profit of from three to ten per cent, thus they cannot absorb the tax or they will go out of business; they cannot pass on the tax, or they make a gift of their business to out-of-state competitors; they can only migrate from Michigan, and one-half, or at least one-quarter will migrate and bring economic disaster to Michigan.

The Court, in giving its ruling, appeared to use good judgment in this case in not meddling with the problem, despite the histrionics. As an introductory admonishment, the ruling first observed that the plaintiffs made no mention in their plea concerning the saving in property taxes which the sales

tax made possible. Then the Court admonished the legislature for not declaring its intention clearly or by amendment. The decision maintained that the responsibility for the justice or the wisdom of taxation remained with the legislature. It was the province of the Court to construe and not to make the laws, and since the legislature had been in session for the past three months, why had not the desired relief been forthcoming? The Court concluded that the present interpretation of the Board (the ingredient rule) was reasonable and sensible, and rendered the various provisions of the act consistent and harmonious.

One can well take exception to this last statement—that the rule renders the various provisions of the act consistent and harmonious—but the statement is essentially dictum. It is hardly possible, however, to dispute the correctness of the Court's position with regard to the onus of responsibility for the problem presented. It is obvious that the administrative officers did not know what the legislature wanted, evident that direction was needed, and definite, too, that under the State Constitution it was the duty of the legislature to explicitly indicate its intention.

In retrospect, there appear to be two possible reasons for the legislature's disinclination to deal with the problem—each of these, of course, is a matter of speculation. The problem of granting exemptions to business sales under a sales tax is admittedly difficult, and lethargy could account for the legislature's preference to have the administrative officers assume the technical responsibility. Secondly, it is possible that the legislative members preferred

<sup>3</sup> 271 Mich. 282.

only a selective exemption among businessmen; that is, they wanted sales to agricultural producers and manufacturers to be exempt, but wished those to wholesalers and retailers (except goods for resale) to be taxable. In other words, the legislature wanted to classify the taxpayers by economic groups, but did not wish to have such obvious discrimination openly and explicitly stated by statute. Thus, their ambiguity was intentional, in the hope that the administrative officers would "sense" the intended discrimination, and assume the responsibility for such a classification.

Such speculations in the realm of political machinations may appear to be far-fetched; nevertheless they seem plausible for the sequel of the story is that the legislature amended the act in 1935 in order to exempt goods sold for consumption or use in industrial processing and agricultural producing. But again, the directive was oblique and obtuse! The amendment merely stated that the tax was not applicable when goods were sold for consumption or use in industrial processing or agricultural producing. This provision may be interpreted in either of two ways: broadly, in the sense that all goods sold to such businesses are exempt; or narrowly, with the meaning that it is applicable only to goods used *directly* in industrial processing and agricultural producing. The latter interpretation would exempt industrial machinery, provided that it was used in the actual and immediate process of production, but would not, for example, exempt a typewriter used in the office of an industrial plant, or a truck used to deliver the finished goods.

In the absence of a specific directive from the legislature, the administrative officers adopted the narrow interpretation, which consequently has required a determination for every article purchased by industry and agriculture as to whether it is directly or indirectly used in production. This problem has been a continuous administrative ogre. To give but two examples of the difficulties: fuel must be prorated if used in both the office and processing part of a factory; and light bulbs are taxable if used in the warehouse of a factory, but exempt if used in the actual processing part of the plant.

The necessity of differentiating between the direct and indirect use of goods significantly distracts from the rationality of the sales tax, for it makes the levy more a system of selective excises than a uniform tax on consumption. Assuming that a single-stage, individual, nonbusiness levy is preferable to the multilevel type, and assuming also that such a tax is not administratively feasible if all sales to business are exempt, the proposition still remains that it is desirable to have as many business exemptions as possible, and to tax only those articles sold to business which may be used by both business and non-business consumers. Therefore, the distinction between direct and indirect use is essentially irrelevant. The objective should be to exclude purchases which are significant in business costs, wherever possible, and to tax only those items necessary to minimize evasion. And certainly, there are no desirable fiscal or economic advantages attained by granting exemptions only to industrial processors and commercial farmers,

and not to other businessmen. Goods for resale have been declared exempt in Michigan apparently on the justification that such an exemption reduces the accumulation of the tax. Yet a retailer is subject to a tax on all purchases other than those for resale, even though it is possible that the tax on the former is as readily shifted as a tax on the latter.

The Michigan principle of excluding only equipment, machinery, and supplies which are used directly in agricultural production and industrial processing clearly results in multiple taxation, nonneutrality on both the business and consumer levels, and an administrative burden. But it is far easier to criticize the Michigan regulations than to offer a satisfactory alternative. Whereas the desirable principle of exclusion is clear in theory, that is, there should be a minimum of multiple level taxation commensurate with administrative feasibility, great difficulties are encountered in defining explicitly the type or use of product which should be excluded.

The nub of the problem, as indicated previously, is the fact that a large number of materials are purchased by both individual nonbusiness consumers as well as business firms. Some lines of distinction must of necessity be drawn between exempt and nonexempt goods

if the multiple application of the tax is to be reduced and evasion avoided. Yet the number and variety of the articles involved preclude the possibility of drawing lines of distinction on the basis of groups of products. It is necessary to decide in each particular instance where the dividing line should be drawn between exempt and nonexempt goods, and to draw the line so that there is neutrality among dissimilar businesses as well as among consumers. It is probably in this area of exemption, as it applies to machinery, equipment, and related articles, that the most serious difficulties of devising a rational and logically consistent retail sales tax are found. The tax administrator becomes most frustrated here, for the dilemma is a very real one.

The foregoing analysis is essentially explorative and does not suggest a solution to the problem discussed. It should indicate, however, that the retail sales tax in Michigan, as in other states, is far from a simple and easily administered tax. In view of the gravity and the ramifications of the problem, the discussion should also serve to confirm the necessity for research into the theory and practice of the retail sales tax if these revenues are to be incorporated into a structurally sound tax system.



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English Language

UPON ORIGINAL PLANS

DESIGNED TO GIVE, IN COMPLETE AND ACCURATE STATEMENT, IN THE LIGHT OF THE MOST RECENT ADVANCES IN KNOWLEDGE, IN THE READIEST FORM FOR POPULAR USE, THE ORTHOGRAPHY, PRONUNCIATION, MEANING, AND ETYMOLOGY OF ALL THE WORDS, AND THE MEANING OF IDIOMATIC PHRASES, IN THE SPEECH AND LITERATURE OF THE ENGLISH-SPEAKING PEOPLES, TOGETHER WITH PROPER NAMES OF ALL KINDS, THE WHOLE ARRANGED IN ONE ALPHABETICAL ORDER

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UNDER THE SUPERVISION OF

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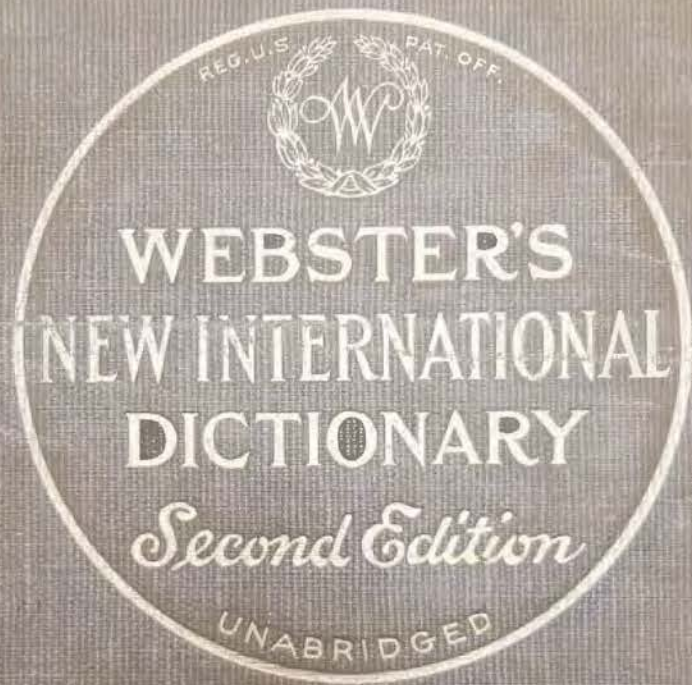
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granting loans for agricultural purposes.

**ag'ri-cul'ture** (ăg'rĭ-kŭl'tŭr; 277), *n.* [F., fr. L. *agricultura*, fr. *agri*, gen. of *ager* field + *cultura* cultivation. See ACRE; CULTURE.] The art or science of cultivating the ground, and raising and harvesting crops, often including also feeding, breeding, and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use and their disposal by marketing or otherwise. In this broad use it includes farming, horticulture, forestry, dairying, sugar making, etc.

**ag'ri-cul'tur-er** (-kŭl'tŭr-ēr), *n.* An agriculturist.

**ag'ri-cul'tur-ist** (-ĭst), *n.* **a** One versed in the theory of agriculture. **b** A farmer, esp. one trained in agriculture.

**Ag'ri-lus** (ăg'rĭ-lŭs), *n.* [NL., fr. Gr. *agrius* living in the country.] *Zool.* A large genus of slender beetles of the

to practice breeding (sense 5).

**breed in and in.** = INBREED, *v.*, 2.  
**breed true.** To produce offspring with general characteristics like the parents.

**breed** (brēd), *n.* **1. a** A race or variety of animals, or sometimes a group of plants, related by descent and similar in most characters; race; stock; strain; also, in loose popular language, a species or variety. **b** In more exact usage, a group of domestic animals (or of plants) developed through the influence of man, either intentionally or unintentionally, and requiring control by man to prevent mixtures with other races, and consequent loss of the distinctive characters. Generally these characters involve differences of shape, and the breed may comprise several color varieties. *Breed*, in this sense, designates a more extensive group than *strain*, and does not imply directly traceable descent from a particular individual. With respect to plants, *breed* corresponds closely to *variety* in the horticultural sense. **c** A number of persons of the same line of descent, or of the same racial stock.

Twice fifteen thousand hearts of England's *breed*. *Shak.*

**2. Class; sort; kind; —** of men, things, or qualities.

This courtesy is not of the right *breed*. *Shak.*

**3. A number produced at once; brood; offspring.** *Now Dial.*

**4. Act of breeding; generation.** *Obs.*

**5. A half-breed.** *Colloq., U. S.*

**breed'bate'** (-bāt'), *n.* One who stirs up quarrels. *Shak.*

**breed'er** (brēd'ēr), *n.* **1.** One that breeds offspring; fig., an originator. "The *breeder* of my sorrow." *Shak.*

**2. Specif.:** **a** An animal or plant used for propagation.

**b Hort.** A breeder tulip.

**3. One who or that which breeds; esp., one whose work is to breed a (specified) creature, as in:**

**dog breeder, poultry breeder, rabbit breeder.**

**4. A boil or whitlow; — called also **breeding sore.**** *Dial.*

**breeder tulip.** *Hort.* Any of several May-flowering tulips with self-colored flowers.

**breed'ing**, *n.* **1.** Act or process of bearing or generating; gestation; hatching; hence, origination or development.

**2. Descent; extraction.** *Obs.* *Shak.*

**3. Nurture; education; formation of manners.**

She had her *breeding* at my father's charge. *Shak.*

**4. a** Deportment or behavior in the external offices and decorums of social life; manners; knowledge of, or training in, the ceremonies and polite observances of society. **b** Good breeding.

**5. The propagation of plants or animals, particularly for the purpose of improving them, as by selection after controlled mating or hybridization (esp. in plants).** *Breeding* (in this sense) is prefixed to definitions in this Dictionary to indicate the subject matter or the field in which the word or sense is typically used.

44b

**Syn.** — Instruction, training; deportment. See EDUCATION.

**breeding ground** A place to which animals resort for

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Har've-ian (här've.än; här.vē'än), *adj.* Of, pert. to, or commemorating William Harvey. See HARVEY (in *Biog.*).

har'vest (här'vest; -vist; 119), *n.* [ME. *harvest*, *hervest*, harvest, autumn, fr. AS. *haerfest*; akin to LG. *harfst*, D. *herfst*, OHG. *herbist*, G. *herbst*, ON. *haust*, and to L. *carpere* to pluck, Gr. *karpos* fruit. Cf. CARPEL, CARPET, EXCERPT, HARROW implement, SCARCE.] **1.** The season of gathering grain and fruits, late summer or early autumn; also, the gathering of a crop of any kind.

Seedtime and *harvest* . . . shall not cease. *Gen.* viii. 22.

**2.** That which is reaped or ready to be reaped or gathered; a crop, as of grain (wheat, maize, etc.) or fruit; also, the yield of any product, as honey.

Put ye in the sickle, for the *harvest* is ripe. *Joel* iii. 13.

**3.** The produce or reward of any exertion or labor; gain.  
The *harvest* of a quiet eye. *Wordsworth.*

**4.** Also **harvest brown.** A brown, red-yellow in hue, of medium saturation and medium brilliance. Cf. COLOR.

COMBINATIONS and PHRASES are:

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| harvest dinner   | harvest supper | harvest work   |
| harvest festival | harvesttime    | harvest worker |

har'vest, *v. t.*; -VEST·ED; -VEST·ING. **To reap or gather, as any crop, material, or result.** — *v. i.* **To gather in a crop.**

harvest bell. **a** A European gentian (*Gentiana pneumonanthe*). **b** In the United States, the soapwort gentian.

harvest doll. See HARVEST HOME.

har'vest·er (här'ves.tēr; -vis-; 119), *n.* One who or that which harvests; as: **a** A harvestman. **b** Any of various machines for harvesting field crops, as grain, beans, sugar cane, etc. **c** One who gathers or gleans, as information.

harvester ant. Any of various ants which gather and store up seeds for food, as *Messor structor* and *M. barbarus* of the Mediterranean countries, and the agricultural ant (*Pogonomyrmex barbatus*) of the southwestern U. S.

**Hor·ten'si·an** (-shĭ·ăn; -shăn), *adj.* Of or pertaining to Quintus Hortensius (c. 350–286 B.C.).

**hor'ti·cul'tur·al** (hôr'tĭ·kŭl'tŭr·ăl), *adj.* Pertaining to horticulture. — **hor'ti·cul'tur·al·ly**, *adv.*

**horticultural economy.** A type of primitive group subsistence based on the cultivation of gardens, usually with hunting, fishing, or animal husbandry.

**hor'ti·cul'ture** (hôr'tĭ·kŭl'tŭr), *n.* [L. *horti* (gen. of *hortus*) *cultura* cultivation of a garden. See YARD enclosure; CULTURE.] The cultivation of a garden or orchard; the science and art of growing fruits, vegetables, and flowers or ornamental plants. Horticulture is one of the main divisions of agriculture. Cf. FLORICULTURE, VITICULTURE, OLERICULTURE. — **hor'ti·cul'tur·ist** (-kŭl'tŭr·ĭst), *n.*

**hor'tite** (hôr'tīt), *n.* [From *Horta-vaer*, Norway.] *Petro.* A gabbroic intrusive rock rich in lime and consisting



duced, brought  
ble-ness, n.  
prod'uct (pröd'ükt; -ükt), n.

[L. *productus*, past part of *producere*. See PRODUCE.] 1. Anything produced, as by generation, growth, labor, or thought, or by the operation of involuntary causes; as, the products of the season, or of the farm; the products of the brain; he is a finished product. These institutions are the products of enthusiasm. Burke.

2. The amount, quantity, or total produced; collective productions, effects, etc.; as, the net product of a factory.

3. Chem. A substance produced from one or more other substances as a result of chemical change. Cf. EDUCT, 2.

4. Math. The number or magnitude resulting from the multiplication together of two or more numbers or magnitudes; as, the product of 7 and 5 is 35. In general, the result of any kind of multiplication, as an assemblage formed by associating each element of one assemblage (the multiplier) with each element of another (the multiplicand). See MULTIPLICATION, 5.

5. Symbolic Logic. The result of the operation of logical conjunction, or multiplication. Examples of products are: in the calculus of classes, or concepts,  $a \cdot b$  meaning "that which is both  $a$  and  $b$ "; in the calculus of propositions,  $p \cdot q$  meaning the joint assertion  $p$  and  $q$ ; in the calculus of relations,  $a R S b$ , the product of  $a R b$  and  $a S b$ , meaning  $a$  has both the relation  $R$  and the relation  $S$  to  $b$ .

Syn. — PRODUCT, PRODUCTION, PRODUCE. PRODUCT is the general word for that which is produced in any fashion; PRODUCTION may denote the act or process of producing; when used concretely, it commonly applies to the products of intellectual or artistic labor; PRODUCE (ordinarily collective) denotes esp. agricultural products; as, the products of manufacture; a notable product of industry and skill; "a tranquillity that seemed no product of inertia" (*De Quincey*); one of the loftiest productions of genius; the immaturity of one's early productions; "the meager produce of the land" (*Cowper*); the Produce Exchange.

prod'uct' (pröd-dükt'), v. t. To produce. Obs.  
— prod'uct'ed (-dük'téd; -tíd; 119), part. adj.

prod'uct (pröd'ükt; -ükt), n. = PRATIQUE; — probably a corruption.  
prod'uct'1-ble (pröd-dük'tī.b'l), adj. [See PRODUCT.] Produc-

ible. — prod'uct'1-bil'itv (-hīl'itī). n. *utilis*, fr.

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Tiger Shell

tiger shell. A large cowrie (Cypraea tigris) thickly covered with brown spots on the upper surface.

tiger's milk. A South African fig marinated with brown spots on the upper surface.

tiger's mouth. A large, spotted, and toothy mouth of a tiger.

tiger's nose. A large, spotted, and toothy nose of a tiger.

tiger's tail. A large, spotted, and toothy tail of a tiger.

tiger's teeth. A large, spotted, and toothy set of teeth of a tiger.

tiger's tongue. A large, spotted, and toothy tongue of a tiger.

tiger's whiskers. A large, spotted, and toothy set of whiskers of a tiger.

tiger's stripes. A large, spotted, and toothy set of stripes of a tiger.

tiger's roar. A large, spotted, and toothy sound of a tiger.

tiger's skin. A large, spotted, and toothy piece of skin of a tiger.

tiger's bones. A large, spotted, and toothy set of bones of a tiger.

tiger's claws. A large, spotted, and toothy set of claws of a tiger.

tiger's paws. A large, spotted, and toothy set of paws of a tiger.

tiger's fur. A large, spotted, and toothy piece of fur of a tiger.

tiger's hair. A large, spotted, and toothy piece of hair of a tiger.

tiger's eyes. A large, spotted, and toothy pair of eyes of a tiger.

tiger's ears. A large, spotted, and toothy pair of ears of a tiger.

tighten one's belt. To stint oneself, esp. in food; to restrict strict economy.

tighten up. To tighten up as to prevent leakage, etc., or to make firmer, stiffer, or the like.

tightener. One who or that which tightens.

tight-fisted. One who or that which is tight-fisted.

tight-rope. A tight-rope.

tight-wire. A tight-wire.

tight work. Work at making watertight containers.

tig. A tiger.

tigress. A female tiger.

tigris. A river in Asia.

tigris. A constellation.

tigroid. Resembling a tiger.

tigua. A tribe in the Americas.

tika. A tribe in the Americas.

tika. A tribe in the Americas.

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tile. A piece of baked earth.

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Foreign Word. + Obsolete Variant of. + combined with. = equals. Abbreviations, Signs, etc., are explained on pages immediately preceding the Vocabulary.

