

Act No. 87
Public Acts of 1991
Approved by the Governor
July 18, 1991
Filed with the Secretary of State
July 18, 1991

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991**

Introduced by Senators N. Smith, McManus, Gast, Posthumus, Emmons, Wartner and Welborn

ENROLLED SENATE BILL No. 329

AN ACT to amend sections 4a, 4g, and 9 of Act No. 167 of the Public Acts of 1933, entitled as amended "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," section 4a as amended by Act No. 143 of the Public Acts of 1990, section 4g as amended by Act No. 121 of the Public Acts of 1987, and section 9 as amended by Act No. 375 of the Public Acts of 1988, being sections 205.54a, 205.54g, and 205.59 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 4a, 4g, and 9 of Act No. 167 of the Public Acts of 1933, section 4a as amended by Act No. 143 of the Public Acts of 1990, section 4g as amended by Act No. 121 of the Public Acts of 1987, and section 9 as amended by Act No. 375 of the Public Acts of 1988, being sections 205.54a, 205.54g, and 205.59 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 4a. A person subject to tax under this act need not include in the amount of the gross proceeds used for the computation of the tax, sales of tangible personal property:

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

personnel, and that is licensed by the department of social services pursuant to Act No. 116 of the Public Acts of 1973, as amended, being sections 722.111 to 722.128 of the Michigan Compiled Laws.

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

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

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

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

(d) Affixed to and made a structural part of real estate excepted from the definition of "sale at retail" under section 1(1)(c).

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

(f) To persons engaged in a business enterprise and using or consuming the tangible personal property in the tilling, planting, caring for, or harvesting of the things of the soil; in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth or in the direct gathering of fish, by net, line, or otherwise, only by an owner-operator of the business enterprise, not including a charter fishing business enterprise. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land, and, beginning January 1, 1987, subsurface irrigation pipe, if the land tile or irrigation pipe is used in the production of agricultural products as a business enterprise. At the time of the transfer of this tangible personal property, the transferee shall sign a statement, in a form approved by the department, stating that the property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise, or in connection with fishing as an owner-operator business enterprise. The statement shall be accepted by all courts as prima facie evidence of the exemption. This exemption includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption does not include transfers of food, fuel, clothing, or any similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed and becoming a structural part of real estate.

(g) To the following:

(i) An industrial processor for use or consumption in industrial processing. Property used or consumed in industrial processing does not include tangible personal property permanently affixed and becoming a structural part of real estate; office furniture, office supplies, and administrative office equipment; or vehicles licensed and titled for use on public highways. Industrial processing does not include receiving and storage of raw materials purchased or extracted by the user or consumer; or the preparation of food and beverages by a retailer for retail sale. As used in this subdivision, "industrial processor" means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail. Sales to a person performing a service who does not act as an industrial processor while performing this service shall not be excluded under this subdivision except as provided in subparagraph (ii).

(ii) After December 31, 1984, a person, whether or not the person is an industrial processor, if the tangible personal property is a computer used in operating industrial processing equipment; equipment used in a computer assisted manufacturing system; equipment used in a computer assisted design or engineering system integral to an industrial process; or a subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

(h) To persons, of a newspaper or periodical admitted under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established not less than 2 years, and published not less than once a week, and copyrighted motion picture films. Tangible personal property used or consumed, and not becoming a component part of a newspaper or periodical, except that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical, and copyrighted motion picture films are subject to tax. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical, and thereby not subject to tax, shall include an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

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

(k) A hearing aid, contact lenses if prescribed for a specific disease that precludes the use of eyeglasses, or any other apparatus, device, or equipment used to replace or substitute for a part of the human body, or used to assist the disabled person to lead a reasonably normal life if the tangible personal property is purchased on a written prescription or order issued by a licensed health professional as defined by section 21005 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.21005 of the Michigan Compiled Laws, or eyeglasses prescribed or dispensed to correct the person's vision by an ophthalmologist, optometrist, or optician.

(l) To persons for use or consumption in the rendition of a service, the use or consumption of which is taxable under section 3a(a) of the use tax act, Act No. 94 of the Public Acts of 1937, as amended, being section 205.93a of the Michigan Compiled Laws, except that this exemption shall be limited to the tangible personal property located on the premises of the subscriber and the necessary exchange equipment.

(m) Not for resale of a vehicle to a Michigan nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

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

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

(p) Installed as a component part of a water pollution control facility for which a tax exemption certificate is issued pursuant to Act No. 222 of the Public Acts of 1966, as amended, being sections 323.351 to 323.358 of the Michigan Compiled Laws, or an air pollution control facility for which a tax exemption certificate is issued pursuant to Act No. 250 of the Public Acts of 1965, as amended, being sections 336.1 to 336.8 of the Michigan Compiled Laws.

(q) To a purchaser of a new motor vehicle purchased before January 1, 1993 if the purchaser qualifies for a special registration under section 226(12) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.226 of the Michigan Compiled Laws, and the vehicle is purchased through a country determined by the department to be providing a like or complete exemption for the purchase of a new motor vehicle to be removed from that country.

Sec. 4g. (1) A person subject to tax under this act need not include in the amount of the gross proceeds used for the computation of the tax any of the following:

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

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

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

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

(2) "Prescription drugs for human use" means insulin or drugs dispensed by a licensed pharmacist to fill individual prescriptions prescribed by a licensed physician or other licensed practitioner of the healing arts solely for the use of a designated person.

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

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

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

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

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

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

(e) Food or drink intended for immediate consumption sold from a vending machine or by a vendor from a mobile facility, except for milk, juices, fresh fruit, candy, nuts, chewing gum, cookies, crackers, and chips, when sold from a vending machine selling these products.

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

Sec. 9. (1) The tax imposed by this act shall be administered by the commissioner pursuant to Act No. 122 of the Public Acts of 1941, as amended, being sections 205.1 to 205.31 of the Michigan Compiled Laws, and this act. In case of conflict between the provisions of Act No. 122 of the Public Acts of 1941, as amended, and this act, the provisions of this act shall prevail.

(2) The department shall promulgate rules under this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) A claim for a refund pursuant to the 1991 amendatory act amending section 4a to provide for the exemption of subsurface irrigation pipe shall be filed not later than September 30, 1991. The approved refunds shall be paid without interest.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.