

SENATE BILL No. 276

April 18, 1991, Introduced by Senator GAST and referred to the Committee on Finance.

A bill to amend sections 4, 6, 6a, 8, 15, and 17 of Act No. 167 of the Public Acts of 1933, entitled as amended "General sales tax act," section 4 as amended by Act No. 219 of the Public Acts of 1981, section 6 as amended by Act No. 186 of the Public Acts of 1980, section 6a as amended by Act No. 23 of the Public Acts of 1985, and section 17 as amended by Act No. 42 of the Public Acts of 1986, being sections 205.54, 205.56, 205.56a, 205.58, 205.65, and 205.67 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 4, 6, 6a, 8, 15, and 17 of Act No. 167
2 of the Public Acts of 1933, section 4 as amended by Act No. 219
3 of the Public Acts of 1981, section 6 as amended by Act No. 186
4 of the Public Acts of 1980, section 6a as amended by Act No. 23
5 of the Public Acts of 1985, and section 17 as amended by Act

1 No. 42 of the Public Acts of 1986, being sections 205.54, 205.56,
2 205.56a, 205.58, 205.65, and 205.67 of the Michigan Compiled
3 Laws, are amended to read as follows:

4 Sec. 4. (1) In computing the amount of tax levied under
5 the provisions of this act for any month, the taxpayer may deduct
6 the following amounts from the tax due under this act:

7 (a) For monthly tax payments for periods ending after
8 January 1, 1983 and before January 1, 1984, the amount provided
9 by subparagraph (i) or (ii), whichever is greater:

10 (i) If the tax that accrued to the state from the sales at
11 retail during the preceding month is remitted to the department
12 on or before the seventh day of the month in which remittance is
13 due, 0.50% of the tax due for the preceding monthly period, but
14 not to exceed \$15,000.00 of the tax due for that month. If the
15 tax that accrued to the state from the sales at retail during the
16 preceding month is remitted to the department after the seventh
17 day and on or before the fifteenth day of the month in which
18 remittance is due, 0.25% of the tax due for the preceding monthly
19 period, but not to exceed \$10,000.00 of the tax due for that
20 month.

21 (ii) The tax due on \$100.00 of taxable gross proceeds for
22 the preceding monthly period, or a prorated portion of \$100.00 of
23 the taxable gross proceeds for the preceding month if the tax-
24 payer engaged in business for less than a month.

25 (b) For monthly tax payments for periods ending on or after
26 January 1, 1984, the amount provided by subparagraph (i) or (ii),
27 whichever is greater:

1 (i) If the tax that accrued to the state from the sales at
2 retail during the preceding month is remitted to the department
3 on or before the seventh day of the month in which remittance is
4 due, 0.75% of the tax due for the preceding monthly period, but
5 not to exceed \$20,000.00 of the tax due for that month. If the
6 tax that accrued to the state from the sales at retail during the
7 preceding month is remitted to the department after the seventh
8 day and on or before the fifteenth day of the month in which
9 remittance is due, 0.50% of the tax due for the preceding monthly
10 period, but not to exceed \$15,000.00 of the tax due for that
11 month.

12 (ii) The tax due on \$150.00 of taxable gross proceeds for
13 the preceding monthly period, or a prorated portion of \$150.00 of
14 the taxable gross proceeds for the preceding month if the tax-
15 payer engaged in business for less than a month.

16 (2) IN COMPUTING THE AMOUNT OF TAX PAYMENT REQUIRED FOR A
17 WEEK THAT A TAXPAYER IS REQUIRED TO REMIT TAXES ON A WEEKLY
18 BASIS, THE TAXPAYER MAY DEDUCT FROM THE TAX DUE THE AMOUNT PRO-
19 VIDED BY SUBPARAGRAPH (i) OR (ii), WHICHEVER IS GREATER:

20 (i) IF THE TAX THAT ACCRUED TO THE STATE FROM THE SALES AT
21 RETAIL DURING THE PRECEDING WEEK IS REMITTED TO THE DEPARTMENT ON
22 OR BEFORE THE FOLLOWING THURSDAY, 0.75% OF THE TAX COLLECTED FOR
23 THE PRECEDING WEEKLY PERIOD, BUT NOT TO EXCEED \$4,615.38 OF THE
24 TAX DUE FOR THAT WEEK.

25 (ii) THE TAX DUE ON \$34.62 OF TAXABLE GROSS PROCEEDS FOR THE
26 PRECEDING WEEKLY PERIOD, OR A PRORATED PORTION OF \$34.62 OF THE

1 TAXABLE GROSS PROCEEDS FOR THE PRECEDING WEEK IF THE TAXPAYER
2 ENGAGED IN BUSINESS FOR LESS THAN A WEEK.

3 (3) THE DISCOUNTS PROVIDED IN SUBSECTIONS (1) AND (2) OF
4 THIS SECTION DO NOT APPLY TO THE PREPAYMENTS COLLECTED AND REMIT-
5 TED BY THE PERSON REQUIRED TO COLLECT AND REMIT THE PREPAYMENT OF
6 SALES TAX ON GASOLINE IN SECTION 6A.

7 (4) ~~-(2)-~~ A deduction ~~shall~~ IS not ~~be~~ allowed under this
8 section for payments of taxes made to the department after the
9 day the taxpayer is required to pay, pursuant to section 6, the
10 tax imposed by this act.

11 (5) ~~-(3)-~~ If, pursuant to section 6(4), the commissioner of
12 revenue prescribes the filing of returns and the payment of the
13 tax for periods in excess of 1 month, a taxpayer ~~shall be~~ IS
14 entitled to a deduction from the tax collections remitted to the
15 department for the extended payment period that is equivalent to
16 the deduction allowed under subsection (1) for monthly periods.
17 ~~If portions of the extended payment period prescribed by the~~
18 ~~commissioner of revenue occurs in both 1983 and 1984, the deduc-~~
19 ~~tion shall be computed using the applicable percentage or fixed~~
20 ~~deduction prescribed in subsection (1)(a) for taxes accruing to~~
21 ~~the state in 1983 and the applicable percentage or fixed deduc-~~
22 ~~tion prescribed in subsection (1)(b) for taxes accruing to the~~
23 ~~state in 1984.~~

24 (6) ~~-(4)-~~ The commissioner may prescribe the filing of esti-
25 mated returns OR PAYMENTS and QUARTERLY OR annual periodic recon-
26 ciliations as necessary to carry out the purposes of this
27 section.

1 (7) ~~—(5)—~~ A person subject to a tax under this act shall not
2 include in the amount of his or her gross proceeds used for the
3 computation of the tax any proceeds of his or her business
4 derived from sales to the United States, its unincorporated agen-
5 cies and instrumentalities, any incorporated agency or instrumen-
6 tality of the United States wholly owned by the United States or
7 by a corporation wholly owned by the United States, the American
8 Red Cross and its chapters and branches, and this state or its
9 departments and institutions or any of its political
10 subdivisions.

11 Sec. 6. (1) ~~The taxpayer shall~~ ON OR BEFORE THE 15TH DAY
12 OF EACH MONTH, unless otherwise provided by law, or as required
13 pursuant to subsection ~~—(4)—~~ (6), ~~on or before the fifteenth day~~
14 ~~of each month,~~ THE TAXPAYER SHALL make out a return for the pre-
15 ceding month on a form prescribed by the department, showing the
16 entire amount of all sales and gross proceeds of his or her busi-
17 ness, the allowable deductions ~~therefrom,~~ and the amount of tax
18 ~~for which~~ THAT he or she is liable FOR, and shall transmit the
19 return, together with a remittance for the amount of the tax, to
20 the department. ~~, on or before the fifteenth day of the month.~~
21 The monthly return shall be signed by the taxpayer or his or her
22 duly authorized agent, and if prepared for the taxpayer by any
23 other person, the return shall so state, giving the name and
24 address of that person and be signed by that person, ~~and~~ giving
25 the name of his or her employer, if any.

26 (2) FOR A TAXPAYER REMITTING TAX BY ELECTRONIC FUNDS
27 TRANSFER PURSUANT TO SECTION 19 OF ACT NO. 122 OF THE PUBLIC ACTS

1 OF 1941, BEING SECTION 205.19 OF THE MICHIGAN COMPILED LAWS, A
2 RETURN IS NOT REQUIRED TO ACCOMPANY THE REMITTANCE. IF ELEC-
3 TRONIC FUNDS TRANSFER FILERS ARE REMITTING ON A WEEKLY BASIS AND
4 ACTUAL TAX FIGURES ARE NOT AVAILABLE ON A WEEKLY BASIS, ESTIMATED
5 PAYMENTS ARE ALLOWED. QUARTERLY RECONCILIATION REPORTS IN A FORM
6 PRESCRIBED BY THE DEPARTMENT ARE DUE WITHIN 30 DAYS AFTER THE END
7 OF THE QUARTER AND ARE TO BE FILED SEPARATELY FROM ELECTRONIC
8 TRANSMISSION OF THE REMITTANCE.

9 (3) FOR A TAXPAYER REQUIRED TO REMIT TAX ON A WEEKLY BASIS,
10 THE PENALTY AND INTEREST PROVIDED BY SECTION 24 OF ACT NO. 122 OF
11 THE PUBLIC ACTS OF 1941, BEING SECTION 205.24 OF THE MICHIGAN
12 COMPILED LAWS, SHALL NOT BE ASSESSED IF THE SAME 1 OF THE FOLLOW-
13 ING IS TRUE FOR EACH OF THE PAYMENTS REQUIRED IN A QUARTER:

14 (A) THE ESTIMATED PAYMENT EQUALS NOT LESS THAN 25% OF THE
15 LIABILITY OF THE SAME MONTH IN THE IMMEDIATELY PRECEDING YEAR.

16 (B) THE ESTIMATED PAYMENT EQUALS NOT LESS THAN 22.5% OF THE
17 ACTUAL LIABILITY FOR THE MONTH.

18 (C) THE PAYMENT EQUALS 100% OF THE ACTUAL LIABILITY FOR THE
19 WEEK.

20 (4) ~~-(2)-~~ For returns of a taxpayer showing sales and gross
21 proceeds ~~-which-~~ THAT include amounts exempt from tax under sec-
22 tion 4i, the taxpayer shall report the number and description by
23 model type of passenger automobiles ~~-which-~~ THAT were sold and to
24 which section 4i applied, the amount of gross proceeds ~~-which-~~
25 THAT are exempt from tax under section 4i, and the amount of tax
26 exempted by section 4i.

1 (5) ~~(3)~~ The tax imposed under this act ~~shall accrue~~
2 ACCRUES to the state on the last day of the month in which the
3 sale is incurred EXCEPT TAXES THAT ARE TO BE REMITTED BY ELEC-
4 TRONIC FUNDS TRANSFER PURSUANT TO SECTION 19 OF ACT NO. 122 OF
5 THE PUBLIC ACTS OF 1941 ARE ACCRUED ON THE LAST DAY OF THE FILING
6 PERIOD. REMITTANCE BY ELECTRONIC FUNDS TRANSFER IS CONSIDERED TO
7 HAVE BEEN MADE ON THE DATE THAT THE REMITTANCE IS ADDED TO THE
8 BANK ACCOUNT DESIGNATED BY THE TREASURER OF THE STATE OF
9 MICHIGAN.

10 (6) ~~(4)~~ The commissioner of revenue, when he or she
11 ~~deems~~ CONSIDERS it necessary to insure payment of the tax or to
12 provide a more efficient administration, may require the filing
13 of ~~returns and~~ RETURN payment, OR ELECTRONIC FUNDS TRANSFER of
14 the tax for other than monthly periods.

15 Sec. 6a. (1) At the time of purchase or shipment from a
16 refiner, pipeline terminal operator, or marine terminal operator,
17 a purchaser or receiver of gasoline shall prepay AND THE REFINER,
18 PIPELINE TERMINAL OPERATOR, OR MARINE TERMINAL OPERATOR SHALL
19 COLLECT a portion of the tax imposed by this act at the rate pro-
20 vided in this section to the refiner, pipeline terminal operator,
21 or marine terminal operator for the purchase or receipt of
22 gasoline. If the purchase or receipt of gasoline is made outside
23 this state for shipment into and subsequent sale within this
24 state, the purchaser or receiver, other than a refiner, pipeline
25 terminal operator, or marine terminal operator, shall make the
26 prepayment required by this section directly to the department.
27 Prepayments shall be made at a cents per gallon rate determined

1 by the department and shall be based on 4% of the statewide
2 average retail price of a gallon of self-serve ~~leaded~~ UNLEADED
3 regular gasoline as determined and certified by the department
4 rounded up to the nearest 1/10 of 1 cent. A person who makes
5 prepayments direct to the department shall make those prepayments
6 according to the schedule in subsection (5).

7 (2) The rate of prepayment applied pursuant to subsection
8 (1) shall be determined NOT LESS THAN every 6 months by the
9 department. ~~unless the department certifies that the change in~~
10 ~~the statewide average retail price of a gallon of self-serve~~
11 ~~leaded regular gasoline has been less than 10% during the 6-month~~
12 ~~period. However, the rate shall be determined not less than~~
13 ~~annually.~~

14 (3) A person subject to tax under this act who makes prepay-
15 ment to another person as required by this section may claim an
16 estimated prepayment credit on ~~its~~ THE regular monthly return
17 filed pursuant to section 6. The credit shall be for prepayments
18 made during the month in which the return is required and shall
19 be based upon the difference between prepayments made in the
20 immediately preceding month and collections of prepaid tax
21 received from sales or transfers. A sale or transfer for which
22 collection of prepaid tax is due the taxpayer shall be subject to
23 a bad debt deduction under section 4i, whether or not the sale or
24 transfer is a sale at retail. The credit shall not be reduced
25 because of actual shrinkage. A taxpayer who does not, in the
26 ordinary course of business sell gasoline in each month of the
27 year, may, with the approval of the department, base the initial

1 prepayment deduction in each tax year on prepayments made in a
2 month other than the immediately preceding month. ~~Estimated~~
3 ~~prepayment credits claimed with the return due in January 1984~~
4 ~~shall be based on the taxpayer's retail sales of gasoline in~~
5 ~~December 1983.~~ The difference in actual prepayments shall be
6 reconciled on the annual return in accordance with procedures
7 prescribed by the department.

8 (4) At the option of the taxpayer the estimated prepayment
9 credit may be claimed on the return required to be filed under
10 Act No. 150 of the Public Acts of 1927, being sections 207.101 to
11 207.202 of the Michigan Compiled Laws, in lieu of a claim for the
12 credit on the return required to be filed under section 6.
13 Prepayments claimed on the motor fuel tax return shall be based
14 on the difference in the prepayments made in the immediately pre-
15 ceding month and collections of prepaid tax received from sales
16 or transfer and shall be for prepayments made in the month ~~in~~
17 ~~which~~ THAT the return is due. A taxpayer electing an option
18 under this subsection shall be entitled to a deduction under sec-
19 tion 4i as permitted by subsection (3). ~~Prepayments claimed on~~
20 ~~the motor fuel tax return due in January 1984 shall be based, at~~
21 ~~the option of the taxpayer, on retail sales for December 1983, or~~
22 ~~the number of gallons for which motor fuel tax is due for~~
23 ~~December 1983.~~ Amounts credited pursuant to this section shall
24 not be deducted from amounts required to be credited to the
25 Michigan transportation fund pursuant to section 18b of Act
26 No. 150 of the Public Acts of 1927, being section 207.118b of the
27 Michigan Compiled Laws. The department may establish procedures

1 for the election of claims under subsection (3) and this
2 subsection to avoid duplication of claims.

3 (5) Notwithstanding the other provisions for the payment and
4 remitting of tax due under this act, a refiner, pipeline terminal
5 operator, or marine terminal operator shall account for and remit
6 to the department the prepayments received pursuant to this sec-
7 tion in accordance with ~~the following schedule~~ EITHER OF THE
8 FOLLOWING:

9 (A) REFINERS, PIPELINE TERMINAL OPERATORS, OR MARINE TERMI-
10 NAL OPERATORS REQUIRED TO REMIT ON A WEEKLY BASIS BY ELECTRONIC
11 FUNDS TRANSFER SHALL FOLLOW THE PROVISIONS IN SECTION 6(2) AND
12 SECTION 19 OF ACT NO. 122 OF THE PUBLIC ACTS OF 1941, BEING SEC-
13 TION 205.19 OF THE MICHIGAN COMPILED LAWS.

14 (B) THOSE NOT REQUIRED TO REMIT ON A WEEKLY BASIS BY ELEC-
15 TRONIC FUNDS TRANSFER SHALL FILE AS FOLLOWS:

16 (i) ~~(a)~~ On or before the twenty-fifth of each month, pre-
17 payments received after the end of the preceding month and before
18 the sixteenth of the month in which the prepayments are made.

19 (ii) ~~(b)~~ On or before the tenth of each month, ~~other than~~
20 ~~January 1984,~~ payments received after the fifteenth and before
21 the end of the preceding month.

22 (6) A refiner, pipeline terminal operator, or marine termi-
23 nal operator who fails to remit prepayments made by a purchaser
24 or receiver of gasoline ~~shall be~~ IS subject to the penalties
25 provided by Act No. 122 of the Public Acts of 1941, being sec-
26 tions 205.1 to ~~205.30~~ 205.31 of the Michigan Compiled Laws.

1 (7) The refiner, pipeline terminal operator, or marine
2 terminal operator shall not receive a deduction under section 4
3 for receiving and remitting prepayments from a purchaser or
4 receiver pursuant to this section.

5 (8) The purchaser or receiver of gasoline who makes prepay-
6 ments shall not be subject to further liability for the amount of
7 the prepayment if the refiner, pipeline terminal operator, or
8 marine terminal operator fails to remit the prepayment.

9 ~~(9) On or before January 1, 1985, the department shall make~~
10 ~~a report to the chairpersons of the house taxation and senate~~
11 ~~finance committees outlining the procedures it has implemented or~~
12 ~~intends to implement to detect the underpayment or nonpayment of~~
13 ~~gasoline sales tax.~~

14 (9) ~~(10)~~ As used in this section:

15 (a) "Marine terminal operator" means a person who stores
16 gasoline at a boat terminal transfer defined as a dock, a tank,
17 or equipment contiguous to a dock or a tank, including equipment
18 used in the unloading of gasoline from a ship and in transferring
19 the gasoline to a tank pending wholesale bulk reshipment.

20 (b) "Pipeline terminal operator" means a person who stores
21 gasoline in tanks and equipment used in receiving and storing
22 gasoline from interstate and intrastate pipelines pending whole-
23 sale bulk reshipment.

24 (c) "Purchase" or "shipment" does not include an exchange of
25 gasoline, or an exchange transaction, between refiners, pipeline
26 terminal operators, or marine terminal operators.

1 (d) "Refiner" means a person who manufactures or produces
2 gasoline by any process involving substantially more than the
3 blending of gasoline.

4 ~~(11) This section shall take effect January 1, 1984.~~

5 Sec. 8. ~~Consolidated returns.~~ Any person engaging in 2
6 or more places in the same business or businesses taxable under
7 this act, shall file a consolidated return OR MAKE A CONSOLIDATED
8 PAYMENT covering all ~~such~~ THE business activities engaged in
9 within this state. ~~and shall be entitled to deduct 1 exemption~~
10 ~~only in the amount of \$50.00 per month as allowed in section 4.~~
11 A TAXPAYER FILING A CONSOLIDATED RETURN OR MAKING A CONSOLIDATED
12 PAYMENT SHALL BE ENTITLED TO ONLY 1 MAXIMUM DISCOUNT AS PROVIDED
13 IN SECTION 4.

14 Sec. 15. (1) The department shall withhold the issuance of
15 any certificate of dissolution or withdrawal of any corporation
16 organized under the laws of this state or organized under the
17 laws of another state and admitted to do business in this state
18 until all taxes levied under this act against ~~any such~~ THAT
19 corporation have been paid, or until it is determined the appli-
20 cant is not indebted for any taxes levied ~~hereunder~~ UNDER THIS
21 ACT.

22 (2) If a corporation licensed under this act fails for any
23 reason to file the required returns or to pay the tax due, any of
24 its officers having control, or supervision of, or charged with
25 the responsibility for making ~~such~~ THE returns ~~and~~ OR pay-
26 ments shall be personally liable for ~~such~~ THE failure. The
27 dissolution of a corporation ~~shall~~ DOES not discharge an

1 officer's liability for a prior failure of the corporation to
2 make a return or remit the tax due. The sum due for such a
3 liability may be assessed and collected as provided in ~~section~~
4 ~~11~~ SECTIONS 23 AND 24 OF ACT NO. 122 OF THE PUBLIC ACTS OF 1941,
5 BEING SECTIONS 205.23 AND 205.24 OF THE MICHIGAN COMPILED LAWS.

6 Sec. 17. A person liable for any tax imposed under this act
7 shall keep accurate and complete beginning and annual inventory
8 and purchase records of additions to inventory, complete daily
9 sales records, receipts, invoices, bills of lading, and any and
10 all pertinent documents in a form the department ~~may require~~
11 REQUIRES. If an exemption from sales tax is claimed by reason of
12 the sale being for resale or for any of the other exemptions or
13 deductions granted under this act, a record shall be kept of the
14 name and address of the person to whom the sale is made, the date
15 of the sale, the article purchased, the use to be made of the
16 article, and the amount of the sale, and if that person has a
17 sales tax license, that number shall also be included. ~~Any~~ A
18 person knowingly making a sale of tangible personal property for
19 the purpose of resale at retail to another person not licensed
20 under this act ~~shall be~~ IS liable for the tax imposed under
21 this act unless the transaction is exempt under the provisions of
22 section 4k. These records must be retained for a period of 4
23 years after the tax imposed under this act to which the records
24 apply is due or as otherwise provided by law. If the department
25 considers it necessary, the department may require any person, by
26 notice served upon that person, to make a return, MAKE A PAYMENT,
27 render under oath certain statements, or keep certain records the

1 department considers sufficient to show whether or not that
2 person is liable for tax under this act. If the taxpayer fails
3 to file a return, MAKE A PAYMENT, or ~~to~~ maintain or preserve
4 proper records as prescribed in this section, or the department
5 has reason to believe that any records maintained, ~~or~~ returns
6 filed, OR PAYMENTS MADE are inaccurate or incomplete and that
7 additional taxes are due, the department may assess the amount of
8 the tax due from the taxpayer based on information that is avail-
9 able or that may become available to the department. That
10 assessment ~~shall be~~ IS considered prima facie correct for the
11 purpose of this act and the burden of proof of refuting the
12 assessment ~~shall be~~ IS upon the taxpayer.