

Act No. 325
Public Acts of 1993
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Oxender, Gnodtke, Munsell, Horton, Johnson, Bullard, Gernaat, DeLange, Bender, Bandstra, Dalman, Llewellyn, Brackenridge, Stille, Walberg, Middleton, Dobb and Martin

ENROLLED HOUSE BILL No. 5102

AN ACT to amend sections 1, 2, 4, 4a, 6, 6a, 15, 23, and 25 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 1 as amended by Act No. 259 of the Public Acts of 1987, section 2 as amended by Act No. 228 of the Public Acts of 1984, sections 4 and 6 as amended by Act No. 18 of the Public Acts of 1993, section 4a as amended by Act No. 87 of the Public Acts of 1991, section 6a as amended by Act No. 23 of the Public Acts of 1985, and section 25 as amended by Act No. 70 of the Public Acts of 1991, being sections 205.51, 205.52, 205.54, 205.54a, 205.56, 205.56a, 205.65, 205.73, and 205.75 of the Michigan Compiled Laws; and to add section 4m.

The People of the State of Michigan enact:

Section 1. Sections 1, 2, 4, 4a, 6, 6a, 15, 23, and 25 of Act No. 167 of the Public Acts of 1933, section 1 as amended by Act No. 259 of the Public Acts of 1987, section 2 as amended by Act No. 228 of the Public Acts of 1984, sections 4 and 6 as amended by Act No. 18 of the Public Acts of 1993, section 4a as amended by Act No. 87 of the Public Acts of 1991, section 6a as amended by Act No. 23 of the Public Acts of 1985, and section 25 as amended by Act No. 70 of the Public Acts of 1991, being sections 205.51, 205.52, 205.54, 205.54a, 205.56, 205.56a, 205.65, 205.73, and 205.75 of the Michigan Compiled Laws, are amended and section 4m is added to read as follows:

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

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

(b) "Sale at retail" means a transaction by which the ownership of tangible personal property is transferred for consideration, if the transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use, or for any purpose other than for resale, or for lease, if the rental receipts are taxable under the use tax act, Act No. 94 of the Public Acts of 1937, as amended, being sections 205.91 to 205.111 of the Michigan Compiled Laws, in the form of tangible personal property to a person licensed under this act, or for demonstration purposes or lending or leasing to a public or parochial school offering a course in automobile driving. However, a vehicle purchased by the school shall be certified for driver education and shall not be reassigned for personal use of the school's administrative personnel. For a dealer selling a new car or truck, the exemption for demonstration purposes shall be

determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style in accordance with the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in a calendar year for demonstration purposes.

(c) "Sale at retail" includes the sale of tangible personal property to persons directly engaged in the business of constructing, altering, repairing, or improving real estate for others except property affixed to and made a structural part of the real estate of a nonprofit hospital or nonprofit housing. A nonprofit hospital or nonprofit housing includes only the property of a nonprofit hospital or the homes or dwelling places constructed by a nonprofit housing entity qualified as exempt pursuant to section 15a of the state housing development authority act of 1966, Act No. 346 of the Public Acts of 1966, as amended, being section 125.1415a of the Michigan Compiled Laws, the income or property of which does not directly or indirectly inure to the benefit of an individual, private stockholder, or other private person.

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

(e) "Sale at retail" includes the sale of electricity, natural or artificial gas, or steam if made to the consumer or user for consumption or use rather than for resale. Sale at retail does not include the sale of water through water mains or the sale of water delivered in bulk tanks in quantities of not less than 500 gallons.

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

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

(h) "Gross proceeds" means the amount received in money, credits, subsidies, property, or other money's worth in consideration of a sale at retail within this state, without a deduction for the cost of the property sold, the cost of material used, the cost of labor or service purchased, an amount paid for interest or a discount, a tax paid on cigarettes or tobacco products at the time of purchase, a tax paid on beer or liquor at the time of purchase or other expenses. Also, a deduction is not allowed for losses. Gross proceeds does not include an amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer. In a taxable sale at retail of a motor vehicle, if another motor vehicle is used as part payment of the purchase price, the value of the motor vehicle used as part payment of the purchase price shall be that value agreed to by the parties to the sale as evidenced by the signed statement executed pursuant to section 251 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being section 257.251 of the Michigan Compiled Laws. For a sale at retail of a motor vehicle or trailer coach with a transfer of a used motor vehicle or trailer coach, for a sale at retail of a titled watercraft with a transfer of a used titled watercraft, or for a sale at retail of an aircraft with a transfer of a used aircraft made on or after March 14, 1984, and on or before February 1, 1985, the gross proceeds attributable to the sale at retail shall equal 30% of the value of the used motor vehicle, used trailer coach, used aircraft, or used titled watercraft used as part payment of the purchase price, or 30% of the value of a motor vehicle as represented by an unexpired certificate issued pursuant to section 7 or 7a that is presented in connection with the sale at retail of a motor vehicle or trailer coach, subtracted from the full retail price of the motor vehicle, trailer coach, aircraft, or titled watercraft being purchased. A credit or refund for returned goods may be deducted.

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

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

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

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

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

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

Sec. 2. (1) Except as provided in section 2a, there is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, as defined in section 1, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable as provided by law, less deductions allowed by this act.

(2) Any person engaged in the business of making sales at retail who is at the same time engaged in some other kind of business, occupation, or profession not taxable under this act shall keep books to show separately the transactions used in determining the tax levied by this act. If the person fails to keep separate books, there shall be levied upon him or her the tax provided for in subsection (1) equal to 6% of the entire gross proceeds of both or all of his or her businesses. The taxes levied by this section are a personal obligation of the taxpayer.

Sec. 4. (1) In computing the amount of tax levied under this act for any month, a taxpayer not subject to section 6(2) may deduct the amount provided by subdivision (a) or (b), whichever is greater:

(a) If the tax that accrued to the state from the sales at retail during the preceding month is remitted to the department on or before the seventh day of the month in which remittance is due, 0.75% of the tax due at a rate of 4% for the preceding monthly period, but not to exceed \$20,000.00 of the tax due for that month. If the tax that accrued to the state from the sales at retail during the preceding month is remitted to the department after the seventh day and on or before the fifteenth day of the month in which remittance is due, 0.50% of the tax due at a rate of 4% for the preceding monthly period, but not to exceed \$15,000.00 of the tax due for that month.

(b) The tax at a rate of 4% due on \$150.00 of taxable gross proceeds for the preceding monthly period, or a prorated portion of \$150.00 of the taxable gross proceeds for the preceding month if the taxpayer engaged in business for less than a month.

(2) In computing the amount of tax levied under this act for any month, a taxpayer subject to section 6(2) may deduct the amount provided in this subsection. If the tax that is due to the state is remitted to the department on or before the eleventh day of the month in which remittance is due, 0.75% of the tax due at a rate of 4% but not to exceed \$20,000.00 of the tax due for that month may be deducted. If the tax that is due to the state is remitted to the department after the eleventh day and on or before the eighteenth day of the month in which remittance is due, 0.50% of the tax due at a rate of 4% but not to exceed \$15,000.00 of the tax due for that month may be deducted.

(3) A deduction shall not be allowed under this section for payments of taxes made to the department after the day the taxpayer is required to pay, pursuant to section 6, the tax imposed by this act.

(4) If, pursuant to section 6(4), the commissioner of revenue prescribes the filing of returns and the payment of the tax for periods in excess of 1 month, a taxpayer shall be entitled to a deduction from the tax collections remitted to the department for the extended payment period that is equivalent to the deduction allowed under subsection (1) or (2) for monthly periods.

(5) The commissioner may prescribe the filing of estimated returns and annual periodic reconciliations as necessary to carry out the purposes of this section.

(6) A person subject to a tax under this act shall not include in the amount of his or her gross proceeds used for the computation of the tax any proceeds of his or her business derived from sales 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, and this state or its departments and institutions or any of its political subdivisions.

Sec. 4a. A person subject to tax under this act may exclude from 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 the following:

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

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

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

(d) 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 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, other than a specially designed vehicle, together with parts, used to mix and agitate materials added at a plant or jobsite in the concrete manufacturing process. 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) 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 copyrighted motion picture film or a newspaper or periodical admitted under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established not less than 2 years, and published not less than once a week. Tangible personal property used or consumed, and not becoming a component part of a copyrighted motion picture film, 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 is subject to tax. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently is 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.

(j) 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.

(k) 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 is limited to the tangible personal property located on the premises of the subscriber and the necessary exchange equipment.

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

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

(n) 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.

(o) 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.

(p) 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. 4m. The sale of material purchased by persons engaged in the business of constructing, altering, repairing, or improving real estate for others is exempt from the sales tax imposed at the additional rate of 2% approved by the electors on March 15, 1994 if the material purchased is affixed and made a structural part of real estate or used and completely consumed, in the fulfillment of a single contract that is either a fixed price contract offered before March 15, 1994, accepted before June 15, 1994, and not subject to change or modification or a contract entered into pursuant to the obligation of a formal written bid made before March 15, 1994 and accepted before June 15, 1994 that cannot be altered or withdrawn. The tax imposed at the additional rate of 2% approved by the electors on March 15, 1994 also does not apply to bona fide sales agreements made before March 15, 1994 if the agreement cannot be withdrawn or altered, or contains a fixed price not subject to change or modification of greater than 15%.

Sec. 6. (1) Each taxpayer unless otherwise provided by law or as required pursuant to subsection (2) or (4), on or before the fifteenth day of each month shall make out a return for the preceding month on a form prescribed by the department showing the entire amount of all sales and gross proceeds of his or her business, the allowable deductions therefrom, and the amount of tax for which he or she is liable, and shall transmit the return, together with a remittance for the amount of the tax, to the department on or before the fifteenth day of the month. The monthly return shall be signed by the taxpayer or his or her duly authorized agent and, if prepared for the taxpayer by any other person, the return shall so state, give the name and address of that person, be signed by that person, and give the name of his or her employer, if any.

(2) Each taxpayer that had a total tax liability, after subtracting the tax payments made to the secretary of state under this act or the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws, or after subtracting the tax credits available under section 6a, in the immediately preceding calendar year of \$480,000.00 for 1993, \$660,000.00 for 1994, or \$720,000.00 for each year after 1994, or more on or before the eighteenth of each month shall remit to the department, by an electronic funds transfer method approved by the commissioner of revenue, an amount equal to 95% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 95% of the actual liability for the current month being reported, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month. However, for the period beginning May 1, 1994 through April 30, 1995, the payment required under this subsection shall be 140% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year or 95% of the actual liability for the current month being reported, plus the reconciliation payment described in this subsection.

(3) The tax imposed under this act shall accrue to the state on the last day of the month in which the sale is incurred.

(4) The commissioner of revenue, when necessary to insure payment of the tax or to provide a more efficient administration, may require the filing of returns and payment of the tax for other than monthly periods.

Sec. 6a. (1) At the time of purchase or shipment from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of gasoline shall prepay a portion of the tax imposed by this act at the rate provided in this section to the refiner, pipeline terminal operator, or marine terminal operator for the purchase or receipt of gasoline. If the purchase or receipt of gasoline is made outside this state for shipment into and subsequent sale within this state, the purchaser or receiver, other than a refiner, pipeline terminal operator, or marine terminal operator, shall make the prepayment required by this section directly to the department. Prepayments shall be made at a cents per gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. A person who makes prepayments direct to the department shall make those prepayments according to the schedule in subsection (5).

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

(3) A person subject to tax under this act who makes prepayment to another person as required by this section may claim an estimated prepayment credit on its regular monthly return filed pursuant to section 6. The credit shall be for prepayments made during the month for which the return is required and shall be based upon the difference between prepayments made in the immediately preceding month and collections of prepaid tax received from sales or transfers. A sale or transfer for which collection of prepaid tax is due the taxpayer is subject to a bad debt deduction under section 4i, whether or not the sale or transfer is a sale at retail. The credit shall not be reduced because of actual shrinkage. A taxpayer who does not, in the ordinary course of business sell gasoline in each month of the year, may, with the approval of the department, base the initial prepayment deduction in each tax year on prepayments made in a month other than the immediately preceding month. Estimated prepayment credits claimed with the return due in January 1984 shall be based on the taxpayer's retail sales of gasoline in December 1983. The difference in actual prepayments shall be reconciled on the annual return in accordance with procedures prescribed by the department.

(4) At the option of the taxpayer the estimated prepayment credit may be claimed on the return required to be filed under Act No. 150 of the Public Acts of 1927, being sections 207.101 to 207.202 of the Michigan Compiled Laws, instead of a claim for the credit on the return required to be filed under section 6. Prepayments claimed on the motor fuel tax return shall be based on the difference in the prepayments made in the immediately preceding month and collections of prepaid tax received from sales or transfer and shall be for prepayments made in the month in which the return is due. A taxpayer electing an option under this subsection shall be entitled to a deduction under section 4i as permitted by subsection (3). Amounts credited pursuant to this section shall not be deducted from amounts required to be credited to the Michigan transportation fund pursuant to section 18b of Act No. 150 of the Public Acts of 1927, being section 207.118b of the Michigan Compiled Laws. The department may establish procedures for the election of claims under subsection (3) and this subsection to avoid duplication of claims.

(5) Notwithstanding the other provisions for the payment and remitting of tax due under this act, a refiner, pipeline terminal operator, or marine terminal operator shall account for and remit to the department the prepayments received pursuant to this section in accordance with the following schedule:

(a) On or before the twenty-fifth of each month, prepayments received after the end of the preceding month and before the sixteenth of the month in which the prepayments are made.

(b) On or before the tenth of each month, payments received after the fifteenth and before the end of the preceding month.

(6) A refiner, pipeline terminal operator, or marine terminal operator who fails to remit prepayments made by a purchaser or receiver of gasoline is subject to the penalties provided by Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws.

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

(8) The purchaser or receiver of gasoline who makes prepayments is not subject to further liability for the amount of the prepayment if the refiner, pipeline terminal operator, or marine terminal operator fails to remit the prepayment.

(9) As used in this section:

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

(b) "Pipeline terminal operator" means a person who stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate and intrastate pipelines pending wholesale bulk reshipment.

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

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

Sec. 15. (1) The department shall withhold the issuance of any certificate of dissolution or withdrawal 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 all taxes levied under this act against the corporation have been paid, or until it is determined the applicant is not indebted for any taxes levied under this act.

(2) If a corporation licensed under this act fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making the returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for the liability may be assessed and collected as provided in sections 23 and 24 of Act No. 122 of the Public Acts of 1941, being sections 205.23 and 205.24 of the Michigan Compiled Laws.

Sec. 23. (1) A person engaged in the business of selling tangible personal property at retail shall not advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed under this act is not considered as an element in the price to the consumer. This act does not prohibit any taxpayer from reimbursing himself or herself by adding to the sale price any tax levied by this act.

(2) The following brackets shall be used by retailers in determining amounts to be added to sales prices for reimbursement purposes:

Amount of Sale	Tax
1 cent to 10 cents.....	0
11 cents to 24 cents.....	1 cent
25 cents to 41 cents.....	2 cents
42 cents to 58 cents.....	3 cents
59 cents to 74 cents.....	4 cents
75 cents to 91 cents.....	5 cents
92 cents to 99 cents.....	6 cents

For \$1.00 and each multiple of \$1.00, 6% of the sale price.

(3) A person other than the state may not enrich himself or herself or gain any benefit from the collection or payment of the tax. The use of the above brackets does not relieve the retailer from liability for payment of the full amount of the tax levied by this act.

Sec. 25. (1) All sums of money received and collected under this act shall be deposited by the department in the state treasury to the credit of the general fund, except as provided in this section.

(2) Fifteen percent of the collections of the tax imposed at a rate of 4% shall be distributed to cities, villages, and townships pursuant to the state revenue sharing act of 1971, Act No. 140 of the Public Acts of 1971, being sections 141.901 to 141.921 of the Michigan Compiled Laws.

(3) Sixty percent of the collections of the tax imposed at a rate of 4% shall be deposited in the state school aid fund established in section 11 of article IX of the state constitution of 1963 and distributed as provided by law. In addition, all of the collections of the tax imposed at the additional rate of 2% approved by the electors March 15, 1994 shall be deposited in the state school aid fund.

(4) For the fiscal year ending September 30, 1988 and each fiscal year ending after September 30, 1988, of the 25% of the collections of the general sales tax imposed at a rate of 4% directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, and on the sale of the parts and accessories of motor vehicles by new and used car businesses, used car businesses, accessory dealer businesses, and gasoline station businesses as classified by the department of treasury remaining after the allocations and distributions are made pursuant to subsections (2) and (3), the following amounts shall be deposited each year into the respective funds:

(a) Not less than 27.9% to the comprehensive transportation fund. However, for the fiscal year ending September 30, 1991 only, the amount to be deposited in the comprehensive transportation fund shall be reduced by \$1,500,000.00.

(b) The balance to the state general fund.

(5) After the allocations and distributions are made pursuant to subsections (2) and (3), an amount equal to the collections of the tax imposed at a rate of 4% by this act from the sale at retail of computer software as defined in section 1 shall be deposited in the Michigan health initiative fund created in section 5911 of the public health code, Act No. 368

of the Public Acts of 1978, being section 333.5911 of the Michigan Compiled Laws and shall be considered in addition to, and is not intended as a replacement for any other money appropriated to the department of public health. The funds deposited in the Michigan health initiative fund on an annual basis shall not be less than \$9,000,000.00 or more than \$12,000,000.00.

(6) The balance in the state general fund shall be disbursed only on an appropriation or appropriations by the legislature.

Section 2. This amendatory act shall take effect May 1, 1994.

Section 3. Sections 2, 4, 6, 6a, 15, 23, and 25 of Act No. 94 of the Public Acts of 1937, as amended and section 4m as added by this amendatory act, shall not take effect unless Senate Joint Resolution S of the 87th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963.

Section 4. This amendatory act shall not take effect unless Senate Joint Resolution S is submitted to the voters and the following bills are enacted into law:

- (a) House Bill No. 5109.
- (b) House Bill No. 5110.
- (c) House Bill No. 5116.
- (d) House Bill No. 5009.
- (e) House Bill No. 5010.
- (f) House Bill No. 5118.
- (g) House Bill No. 5097.
- (h) House Bill No. 5123.
- (i) House Bill No. 4279.
- (j) House Bill No. 5103.
- (k) House Bill No. 5104.
- (l) House Bill No. 5106.
- (m) House Bill No. 5111.
- (n) House Bill No. 5115.
- (o) House Bill No. 5112.
- (p) House Bill No. 5120.
- (q) House Bill No. 5129.
- (r) House Bill No. 5224.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.