



# HOUSE BILL No. 5204

November 16, 1993, Introduced by Reps. Martin, Middaugh, Gnodtke, McBryde, London, Dalman, Jaye, Nye, Walberg, Lowe, Hammerstrom, DeLange, Jersevic, Dobb, Hill, Cropsey, Horton, Brackenridge, Gernaat and Dolan and referred to the Committee on Taxation.

A bill to amend section 1 of Act No. 167 of the Public Acts of 1933, entitled as amended  
"General sales tax act,"  
as amended by Act No. 259 of the Public Acts of 1987, being section 205.51 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1 of Act No. 167 of the Public Acts of  
2 1933, as amended by Act No. 259 of the Public Acts of 1987, being  
3 section 205.51 of the Michigan Compiled Laws, is amended to read  
4 as follows:

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

6 (a) "Person" means an individual, firm, partnership, joint  
7 venture, association, social club, fraternal organization,  
8 municipal or private corporation, whether organized for profit or  
9 not, company, estate, trust, receiver, trustee, syndicate, the

1 United States, this state, county, or any other group or  
 2 combination acting as a unit, and includes the plural as well as  
 3 the singular number, unless the intention to give a more limited  
 4 meaning is disclosed by the context.

5 (b) "Sale at retail" means a transaction by which the owner-  
 6 ship of tangible personal property is transferred for considera-  
 7 tion, if the transfer is made in the ordinary course of the  
 8 transferor's business and is made to the transferee for consump-  
 9 tion or use, or for any purpose other than for resale, or for  
 10 lease, ~~when~~ IF the rental receipts are taxable under the use  
 11 tax act, Act No. 94 of the Public Acts of 1937, as amended, being  
 12 sections 205.91 to 205.111 of the Michigan Compiled Laws, in the  
 13 form of tangible personal property to a person licensed under  
 14 this act, or FOR demonstration purposes or lending or leasing to  
 15 a public or parochial school offering a course in automobile  
 16 driving. ~~, except that~~ HOWEVER, a vehicle purchased by the  
 17 school shall be certified for driver education and shall not be  
 18 reassigned for personal use of the school's administrative  
 19 personnel. For a dealer selling a new car or truck, the exemp-  
 20 tion for demonstration purposes shall be determined by the number  
 21 of new cars and trucks sold during the current calendar year or  
 22 the ~~immediate prior~~ IMMEDIATELY PRECEDING year without regard  
 23 to specific make or style in accordance with the following sched-  
 24 ule ~~--~~ OF 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20  
 25 units; 501 or more, 25 units; but not to exceed 25 cars and  
 26 trucks in a calendar year for demonstration purposes.

1 (c) "Sale at retail" includes the sale of tangible personal  
2 property to persons directly engaged in the business of  
3 constructing, altering, repairing, or improving real estate for  
4 others except property affixed to and made a structural part of  
5 the real estate of a nonprofit hospital or nonprofit housing. A  
6 nonprofit hospital or nonprofit housing includes only the prop-  
7 erty of a nonprofit hospital or the homes or dwelling places con-  
8 structed by a nonprofit housing entity qualified as exempt pursu-  
9 ant to section 15a of the state housing development authority act  
10 of 1966, Act No. 346 of the Public Acts of 1966, as amended,  
11 being section 125.1415a of the Michigan Compiled Laws, the income  
12 or property of which does not directly or indirectly inure to the  
13 benefit of an individual, private stockholder, or other private  
14 person.

15 (d) "Sale at retail" includes a conditional sale, install-  
16 ment lease sale, and other transfer of property ~~when~~ IF title  
17 is retained as security for the purchase price but is intended to  
18 be transferred later.

19 (e) "Sale at retail" includes the sale of electricity, natu-  
20 ral or artificial gas, or steam ~~when~~ IF made to the consumer or  
21 user for consumption or use rather than for resale. Sale at  
22 retail does not include the sale of water through water mains or  
23 the sale of water delivered in bulk tanks in quantities of not  
24 less than 500 gallons.

25 (f) "Sale at retail" includes computer software offered for  
26 general sale to the public or software modified or adapted to the  
27 user's needs or equipment by the seller, only if the software is

1 available for sale from a seller of software on an as is basis or  
2 as an end product without modification or adaptation. Sale at  
3 retail does not include specific charges for technical support or  
4 for adapting or modifying prewritten, standard, or canned com-  
5 puter software programs to a purchaser's needs or equipment if  
6 those charges are separately stated and identified. Sale at  
7 retail does not include computer software originally designed for  
8 the exclusive use and special needs of the purchaser. As used in  
9 this subdivision, "computer software" means a set of statements  
10 or instructions that when incorporated in a machine usable medium  
11 is capable of causing a machine or device having information pro-  
12 cessing capabilities to indicate, perform, or achieve a particu-  
13 lar function, task, or result.

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

18 (h) "Gross proceeds" means the amount received in money,  
19 credits, subsidies, property, or other money's worth in consider-  
20 ation of a sale at retail within this state, without a deduction  
21 for the cost of the property sold, the cost of material used, the  
22 cost of labor or service purchased, an amount paid for interest  
23 or a discount, a tax paid on beer or liquor at time of purchase  
24 or other expenses. Also, a deduction is not allowed for losses.  
25 Gross proceeds does not include an amount received or billed by  
26 the taxpayer for remittance to the employee as a gratuity or tip,  
27 if the gratuity or tip is separately identified and itemized on

1 the guest check or billed to the customer. In a taxable sale at  
2 retail of a motor vehicle, if another motor vehicle is used as  
3 part payment of the purchase price, the value of the motor vehi-  
4 cle used as part payment of the purchase price shall be that  
5 value agreed to by the parties to the sale as evidenced by the  
6 signed statement executed pursuant to section 251 of THE MICHIGAN  
7 VEHICLE CODE, Act No. 300 of the Public Acts of 1949, as amended,  
8 being section 257.251 of the Michigan Compiled Laws. ~~For a sale~~  
9 ~~at retail of a motor vehicle or trailer coach with a transfer of~~  
10 ~~a used motor vehicle or trailer coach, for a sale at retail of a~~  
11 ~~titled watercraft with a transfer of a used titled watercraft, or~~  
12 ~~for a sale at retail of an aircraft with a transfer of a used~~  
13 ~~aircraft made on or after March 14, 1984, and on or before~~  
14 ~~February 1, 1985, the gross proceeds attributable to the sale at~~  
15 ~~retail shall equal 30% of the value of the used motor vehicle,~~  
16 ~~used trailer coach, used aircraft, or used titled watercraft used~~  
17 ~~as part payment of the purchase price, or 30% of the value of a~~  
18 ~~motor vehicle as represented by an unexpired certificate issued~~  
19 ~~pursuant to sections 7 or 7a that is presented in connection with~~  
20 ~~the sale at retail of a motor vehicle or trailer coach, sub-~~  
21 ~~tracted from the full retail price of the motor vehicle, trailer~~  
22 ~~coach, aircraft, or titled watercraft being purchased. IF A~~  
23 MOTOR VEHICLE, TRAILER COACH, AIRCRAFT, OR TITLED WATERCRAFT IS  
24 USED AS PART PAYMENT IN A TAXABLE SALE AT RETAIL OF ANOTHER MOTOR  
25 VEHICLE, TRAILER COACH, AIRCRAFT, OR TITLED WATERCRAFT, RESPEC-  
26 TIVELY, THE GROSS PROCEEDS IS THE DIFFERENCE BETWEEN THE AGREED  
27 UPON VALUE OF THE MOTOR VEHICLE, TRAILER COACH, AIRCRAFT, OR

1 TITLED WATERCRAFT USED AS PART PAYMENT OF THE PURCHASE PRICE AND  
2 THE FULL RETAIL PRICE OF THE MOTOR VEHICLE, TRAILER COACH, AIR-  
3 CRAFT, OR TITLED WATERCRAFT BEING PURCHASED. A credit or refund  
4 for returned goods may be deducted.

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

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

12 (k) "Department" means the revenue division of the depart-  
13 ment of treasury.

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

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

18 (2) If the department determines that it is necessary for  
19 the efficient administration of this act to regard an unlicensed  
20 person, including a salesperson, representative, peddler, or can-  
21 vasser as the agent of the dealer, distributor, supervisor, or  
22 employer under whom the unlicensed person operates or from whom  
23 the unlicensed person obtains the tangible personal property sold  
24 by the unlicensed person, irrespective of whether the unlicensed  
25 person is making sales on the unlicensed person's own behalf or  
26 on behalf of the dealer, distributor, supervisor, or employer,  
27 the department may so regard the unlicensed person and may regard

1 the dealer, distributor, supervisor, or employer as making sales  
2 at retail at the retail price for the purposes of this act.