



HOUSE BILL No. 5662

June 21 1994 Introduced by Reps Bullard and Profit and referred to the Committee on Taxation

A bill to amend sections 1 and 4a of Act No 167 of the Public Acts of 1933, entitled as amended

General sales tax act, '

as amended by Act No 325 of the Public Acts of 1993, being sections 205 51 and 205 54a of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 1 and 4a of Act No 167 of the Public
2 Acts of 1933, as amended by Act No 325 of the Public Acts of
3 1993, being sections 205 51 and 205 54a of the Michigan Compiled
4 Laws, are amended to read 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
9 or 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, if the rental receipts are taxable under the use tax act,
11 Act No 94 of the Public Acts of 1937, as amended, being sections
12 205 91 to 205 111 of the Michigan Compiled Laws in the form of
13 tangible personal property to a person licensed under this act,
14 or for demonstration purposes or lending or leasing to a public
15 or parochial school offering a course in automobile driving
16 However, a vehicle purchased by the school shall be certified for
17 driver education and shall not be reassigned for personal use of
18 the school's administrative personnel For a dealer selling a
19 new car or truck, the exemption for demonstration purposes shall
20 be determined by the number of new cars and trucks sold during
21 the current calendar year or the immediately preceding year with-
22 out regard to specific make or style in accordance with the fol-
23 lowing schedule of 0 to 25, 2 units 26 to 100, 7 units 101 to
24 500, 20 units 501 or more, 25 units but not to exceed 25 cars
25 and trucks in a calendar year for demonstration purposes

26 (c) "Sale at retail" includes the sale of tangible personal
27 property to persons directly engaged in the business of

1 constructing, altering, repairing, or improving real estate for
2 others except property affixed to and made a structural part of
3 the real estate of a nonprofit hospital or nonprofit housing A
4 nonprofit hospital or nonprofit housing includes only the prop-
5 erty of a nonprofit hospital or the homes or dwelling places con-
6 structed by a nonprofit housing entity qualified as exempt pursu-
7 ant to section 15a of the state housing development authority act
8 of 1966, Act No 346 of the Public Acts of 1966, as amended,
9 being section 125 1415a of the Michigan Compiled Laws, the income
10 or property of which does not directly or indirectly inure to the
11 benefit of an individual, private stockholder, or other private
12 person

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

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

23 (f) Sale at retail includes computer software offered for
24 general sale to the public or software modified or adapted to the
25 user s needs or equipment by the seller, only if the software is
26 available for sale from a seller of software on an as is basis or
27 as an end product without modification or adaptation Sale at

1 retail does not include specific charges for technical support or
 2 for adapting or modifying prewritten standard, or canned com-
 3 puter software programs to a purchaser's needs or equipment if
 4 those charges are separately stated and identified Sale at
 5 retail does not include computer software originally designed for
 6 the exclusive use and special needs of the purchaser As used in
 7 this subdivision, computer software means a set of statements
 8 or instructions that when incorporated in a machine usable medium
 9 is capable of causing a machine or device having information pro-
 10 cessing capabilities to indicate, perform, or achieve a particu-
 11 lar function, task, or result

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

16 (H) 'SALE AT RETAIL' DOES NOT INCLUDE A SERVICE IMPLEMENT
 17 PRODUCED BY A PERSON PROVIDING A SERVICE WHOSE FEE IF ANY IS
 18 BASED ON THE SERVICE PROVIDED RATHER THAN A TANGIBLE PRODUCT OF
 19 THAT SERVICE AS USED IN THIS SUBDIVISION, SERVICE IMPLEMENT
 20 MEANS A TANGIBLE OBJECT THAT IS UNIQUE OF NO INTRINSIC VALUE OF
 21 NO LITERARY OR ARTISTIC VALUE, AND OF NO VALUE TO ANYONE OTHER
 22 THAN THE PERSON WHO COMMISSIONED THE SERVICE SERVICE IMPLEMENT
 23 INCLUDES, BUT IS NOT LIMITED TO, AN ANNUAL REPORT OR FINANCIAL
 24 AUDIT PREPARED BY AN ACCOUNTANT AN AUDIOTAPE OR VIDEOTAPE MASTER
 25 FOR AN ADVERTISEMENT PREPARED BY A POSTPRODUCTION SERVICE AN
 26 ORIGINAL DESIGN OR PLAN PREPARED BY AN ARCHITECT A WILL,
 27 CONTRACT, OR DEED PREPARED BY AN ATTORNEY A LAYOUT OR ARTWORK

1 FOR AN ADVERTISEMENT PREPARED BY A COMMERCIAL ARTIST A TAX
2 RETURN PREPARED BY AN INCOME TAX SERVICE A PHOTOGRAPH FOR REPRO-
3 Duction IN AN ADVERTISEMENT CREATED BY A PHOTOGRAPHER OR AN
4 ELECTROCARDIOGRAM OR PRESCRIPTION ORDERED BY A PHYSICIAN

5 (I) ~~(h)~~ 'Gross proceeds' means the amount received in
6 money, credits, subsidies, property or other money's worth in
7 consideration of a sale at retail within this state, without a
8 deduction for the cost of the property sold, the cost of material
9 used, the cost of labor or service purchased, an amount paid for
10 interest or a discount, a tax paid on cigarettes or tobacco prod-
11 ucts at the time of purchase, a tax paid on beer or liquor at the
12 time of purchase, or other expenses Also, a deduction is not
13 allowed for losses Gross proceeds does not include an amount
14 received or billed by the taxpayer for remittance to the employee
15 as a gratuity or tip if the gratuity or tip is separately iden-
16 tified and itemized on the guest check or billed to the
17 customer In a taxable sale at retail of a motor vehicle, if
18 another motor vehicle is used as part payment of the purchase
19 price the value of the motor vehicle used as part payment of the
20 purchase price shall be that value agreed to by the parties to
21 the sale as evidenced by the signed statement executed pursuant
22 to section 251 of the Michigan vehicle code, Act No 300 of the
23 Public Acts of 1949, as amended, being section 257 251 of the
24 Michigan Compiled Laws ~~For a sale at retail of a motor vehicle~~
25 ~~or trailer coach with a transfer of a used motor vehicle or~~
26 ~~trailer coach, for a sale at retail of a titled watercraft with a~~
27 ~~transfer of a used titled watercraft, or for a sale at retail of~~

~~1 an aircraft with a transfer of a used aircraft made on or after~~
~~2 March 14, 1984, and on or before February 1, 1985, the gross pro-~~
~~3 ceeds attributable to the sale at retail shall equal 30% of the~~
~~4 value of the used motor vehicle, used trailer coach, used air-~~
~~5 craft, or used titled watercraft used as part payment of the pur-~~
~~6 chase price, or 30% of the value of a motor vehicle as repre-~~
~~7 sented by an unexpired certificate issued pursuant to section 7~~
~~8 or 7a that is presented in connection with the sale at retail of~~
~~9 a motor vehicle or trailer coach, subtracted from the full retail~~
~~10 price of the motor vehicle, trailer coach, aircraft, or titled~~
~~11 watercraft being purchased~~ A credit or refund for returned
 12 goods may be deducted

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

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

20 (L) ~~(k)~~ "Department" means the revenue division of the
 21 department of treasury

22 (M) ~~(l)~~ "Taxpayer" means a person subject to a tax under
 23 this act

24 (N) ~~(m)~~ "Tax" includes a tax, interest, or penalty levied
 25 under this act

26 (2) If the department determines that it is necessary for
 27 the efficient administration of this act to regard an unlicensed

1 person, including a salesperson, representative, peddler, or
2 canvasser as the agent of the dealer, distributor supervisor, or
3 employer under whom the unlicensed person operates or from whom
4 the unlicensed person obtains the tangible personal property sold
5 by the unlicensed person, irrespective of whether the unlicensed
6 person is making sales on the unlicensed person's own behalf or
7 on behalf of the dealer, distributor, supervisor, or employer,
8 the department may so regard the unlicensed person and may regard
9 the dealer, distributor, supervisor, or employer as making sales
10 at retail at the retail price for the purposes of this act

11 Sec 4a A person subject to tax under this act may exclude
12 from the amount of the gross proceeds used for the computation of
13 the tax, sales of tangible personal property

14 (a) Not for resale, and when not operated for profit, to a
15 school, hospital, home for the care and maintenance of children
16 or aged persons, or other health welfare educational, cultural
17 arts, charitable, or benevolent institution or agency, operated
18 by an entity of government, a regularly organized church, reli-
19 gious, or fraternal organization, a veterans organization, or a
20 corporation incorporated under the laws of the state, if the
21 income or benefit from the operation does not inure, in whole or
22 in part, to an individual or private shareholder, directly or
23 indirectly, and if the activities of the entity or agency are
24 carried on exclusively for the benefit of the public at large and
25 are not limited to the advantage, interests, and benefits of its
26 members or any restricted group At the time of the transfer of
27 this tangible personal property, the transferee shall sign a

1 statement in a form approved by the department stating that the
2 property is to be used or consumed in connection with the opera-
3 tion of the institution or agency and that the institution or
4 agency qualifies as an exempt entity under this subdivision. The
5 statement shall be accepted by all courts as prima facie evidence
6 of the exemption and the statement shall provide that if the
7 claim for tax exemption is disallowed the transferee will reim-
8 burse the transferor for the amount of tax involved. A sale of
9 tangible personal property to a parent cooperative preschool is
10 exempt from taxation under this act. As used in this subdivi-
11 sion, "parent cooperative preschool" means a nonprofit, nondis-
12 criminatory educational institution, maintained as a community
13 service and administered by parents of children currently
14 enrolled in the preschool, that provides an educational and
15 developmental program for children younger than compulsory school
16 age, that provides an educational program for parents, including
17 active participation with children in preschool activities that
18 is directed by qualified preschool personnel, and that is
19 licensed by the department of social services pursuant to Act
20 No. 116 of the Public Acts of 1973 as amended, being sections
21 722.111 to 722.128 of the Michigan Compiled Laws.

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

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

26 (ii) Sales of vehicles licensed for use on public highways
27 other than a passenger van or bus with a manufacturer's rated

1 seating capacity of 10 or more that is used primarily for the
2 transportation of persons for religious purposes

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

5 (d) Affixed to and made a structural part of real estate
6 excepted from the definition of "sale at retail" under section
7 1(1)(c)

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

13 (f) To persons engaged in a business enterprise and using or
14 consuming the tangible personal property in the tilling, plant-
15 ing, caring for, or harvesting of the things of the soil in the
16 breeding, raising, or caring for livestock, poultry or horticul-
17 tural products including transfers of livestock poultry or
18 horticultural products for further growth or in the direct gath-
19 ering of fish, by net, line, or otherwise only by an
20 owner-operator of the business enterprise, not including a
21 charter fishing business enterprise This exemption includes
22 agricultural land tile, which means fired clay or perforated
23 plastic tubing used as part of a subsurface drainage system for
24 land, and subsurface irrigation pipe, if the land tile or irriga-
25 tion pipe is used in the production of agricultural products as a
26 business enterprise At the time of the transfer of this
27 tangible personal property, the transferee shall sign a

1 statement, in a form approved by the department, stating that the
2 property is to be used or consumed in connection with the produc-
3 tion of horticultural or agricultural products as a business
4 enterprise, or in connection with fishing as an owner-operator
5 business enterprise The statement shall be accepted by all
6 courts as prima facie evidence of the exemption This exemption
7 includes a portable grain bin, which means a structure that is
8 used or is to be used to shelter grain and that is designed to be
9 disassembled without significant damage to its component parts
10 This exemption does not include transfers of food, fuel, cloth-
11 ing, or any similar tangible personal property for personal
12 living or human consumption This exemption does not include
13 tangible personal property permanently affixed and becoming a
14 structural part of real estate

15 (g) To the following

16 (1) An industrial processor for use or consumption in indus-
17 trial processing Property used or consumed in industrial pro-
18 cessing does not include tangible personal property permanently
19 affixed and becoming a structural part of real estate office
20 furniture, office supplies, and administrative office equipment
21 or vehicles licensed and titled for use on public highways, other
22 than a specially designed vehicle, together with parts, used to
23 mix and agitate materials added at a plant or jobsite in the con-
24 crete manufacturing process Industrial processing does not
25 include receiving and storage of raw materials purchased or
26 extracted by the user or consumer or the preparation of food and
27 beverages by a retailer for retail sale As used in this

1 subdivision, industrial processor means a person who
2 transforms, alters or modifies tangible personal property by
3 changing the form, composition, or character of the property for
4 ultimate sale at retail or sale to another industrial processor
5 to be further processed for ultimate sale at retail Sales to a
6 person performing a service who does not act as an industrial
7 processor while performing this service shall not be excluded
8 under this subdivision except as provided in subparagraph (11)

9 (11) A person, whether or not the person is an industrial
10 processor, if the tangible personal property is a computer used
11 in operating industrial processing equipment equipment used in a
12 computer assisted manufacturing system equipment used in a com-
13 puter assisted design or engineering system integral to an indus-
14 trial process, or a subunit or electronic assembly comprising a
15 component in a computer integrated industrial processing system

16 (h) To persons, of a copyrighted motion picture film or a
17 newspaper or periodical admitted under federal postal laws and
18 regulations effective September 1, 1985 as second-class mail
19 matter or as a controlled circulation publication or qualified to
20 accept legal notices for publication in this state, as defined by
21 law or any other newspaper or periodical of general circulation
22 established not less than 2 years, and published not less than
23 once a week Tangible personal property used or consumed, and
24 not becoming a component part of a copyrighted motion picture
25 film, newspaper, or periodical, except that portion or percentage
26 of tangible personal property used or consumed in producing an
27 advertising supplement that becomes a component part of a

1 newspaper or periodical is subject to tax For purposes of this
 2 subdivision, tangible personal property that becomes a component
 3 part of a newspaper or periodical and consequently is not subject
 4 to tax shall include an advertising supplement inserted into and
 5 circulated with a newspaper or periodical that is otherwise
 6 exempt from tax under this subdivision, if the advertising sup-
 7 plement is delivered directly to the newspaper or periodical by a
 8 person other than the advertiser, or the advertising supplement
 9 is printed by the newspaper or periodical

10 (1) To persons licensed to operate A commercial OR
 11 EDUCATIONAL radio or television ~~stations~~ BROADCASTING STATION
 12 if the property is PREDOMINANTLY STORED, used, OR CONSUMED in the
 13 origination, ~~or~~ integration, OR BROADCAST of ~~the various~~
 14 ~~sources of~~ RADIO OR TELEVISION program material ~~for commercial~~
 15 ~~radio or television transmission~~ This subdivision does not
 16 ~~include a vehicle licensed and titled for use on public highways~~
 17 ~~or property used in the transmission to or receiving from an~~
 18 ~~artificial satellite~~

19 (j) A hearing aid contact lenses if prescribed for a spe-
 20 cific disease that precludes the use of eyeglasses, or any other
 21 apparatus device or equipment used to replace or substitute for
 22 a part of the human body, or used to assist the disabled person
 23 to lead a reasonably normal life if the tangible personal prop-
 24 erty is purchased on a written prescription or order issued by a
 25 ~~licensed~~ health professional as defined by section 21005 of the
 26 public health code Act No 368 of the Public Acts of 1978 being
 27 section 333 21005 of the Michigan Compiled Laws, or eyeglasses

1 prescribed or dispensed to correct the person's vision by an
2 ophthalmologist, optometrist or optician

3 (k) To persons for use or consumption in the rendition of a
4 service, the use or consumption of which is taxable under section
5 3a(a) of the use tax act, Act No 94 of the Public Acts of 1937,
6 as amended, being section 205 93a of the Michigan Compiled Laws,
7 except that this exemption is limited to the tangible personal
8 property located on the premises of the subscriber and the neces-
9 sary exchange equipment

10 (l) Not for resale of a vehicle to a Michigan nonprofit cor-
11 poration organized exclusively to provide a community with ambu-
12 lance or fire department services

13 (m) To inmates in a penal or correctional institution pur-
14 chased with scrip issued and redeemed by the institution

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

18 (o) Installed as a component part of a water pollution con-
19 trol facility for which a tax exemption certificate is issued
20 pursuant to Act No 222 of the Public Acts of 1966, as amended
21 being sections 323 351 to 323 358 of the Michigan Compiled Laws,
22 or an air pollution control facility for which a tax exemption
23 certificate is issued pursuant to Act No 250 of the Public Acts
24 of 1965, as amended, being sections 336 1 to 336 8 of the
25 Michigan Compiled Laws

26 (p) To a purchaser of a new motor vehicle purchased before
27 January 1, 1993 if the purchaser qualifies for a special

1 registration under section 226(12) of the Michigan vehicle code
2 Act No 300 of the Public Acts of 1949, being section 257 226 of
3 the Michigan Compiled Laws, and the vehicle is purchased through
4 a country determined by the department to be providing a like or
5 complete exemption for the purchase of a new motor vehicle to be
6 removed from that country