



SENATE BILL No. 1234

September 14, 1994, Introduced by Senators CARL and
WELBORN and referred to the Committee on Finance

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 127 of the Public Acts of 1994, being sec-
tion 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 127 of the Public Acts of 1994, 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, 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) "Gross proceeds" means the amount received in money,
17 credits, subsidies property, or other money's worth in consider-
18 ation of a sale at retail within this state, without a deduction
19 for the cost of the property sold, the cost of material used, the
20 cost of labor or service purchased, an amount paid for interest
21 or a discount, a tax paid on cigarettes or tobacco products at
22 the time of purchase, a tax paid on beer or liquor at the time of
23 purchase or other expenses Also, a deduction is not allowed for
24 losses Gross proceeds does not include an amount received or
25 billed by the taxpayer for remittance to the employee as a gratui-
26 ty or tip, if the gratuity or tip is separately identified and
27 itemized on the guest check or billed to the customer In a

1 taxable sale at retail of a motor vehicle, if another motor
2 vehicle is used as part payment of the purchase price, the value
3 of the motor vehicle used as part payment of the purchase price
4 shall be that value agreed to by the parties to the sale as evi-
5 denced by the signed statement executed pursuant to section 251
6 of the Michigan vehicle code, Act No 300 of the Public Acts of
7 1949, as amended, being section 257 251 of the Michigan Compiled
8 Laws IF A MOTOR VEHICLE, TRAILER COACH, AIRCRAFT, OR TITLED
9 WATERCRAFT IS USED AS PART PAYMENT IN A TAXABLE SALE AT RETAIL OF
10 ANOTHER MOTOR VEHICLE, TRAILER COACH, AIRCRAFT, OR TITLED WATER-
11 CRAFT, RESPECTIVELY, THE GROSS PROCEEDS IS THE DIFFERENCE BETWEEN
12 THE AGREED UPON VALUE OF THE MOTOR VEHICLE, TRAILER COACH, AIR-
13 CRAFT, OR TITLED WATERCRAFT USED AS PART PAYMENT OF THE PURCHASE
14 PRICE AND THE FULL RETAIL PRICE OF THE MOTOR VEHICLE, TRAILER
15 COACH, AIRCRAFT, OR TITLED WATERCRAFT BEING PURCHASED A credit
16 or refund for returned goods or a refund less an allowance for
17 use made for a motor vehicle returned under Act No 87 of the
18 Public Acts of 1986, being sections 257 1401 to 257 1410 of the
19 Michigan Compiled Laws, as certified by the manufacturer on a
20 form provided by the department of treasury, may be deducted
21 (1) "Business" includes an activity engaged in by a person
22 or caused to be engaged in by that person with the object of
23 gain, benefit, or advantage, either direct or indirect
24 (j) "Tax year" or "taxable year" means the fiscal year of
25 the state or the taxpayer's fiscal year if permission is obtained
26 by the taxpayer from the department to use the taxpayer's fiscal
27 year as the tax period instead

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

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

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

7 (2) If the department determines that it is necessary for
8 the efficient administration of this act to regard an unlicensed
9 person, including a salesperson, representative, peddler, or can-
10 vasser as the agent of the dealer, distributor, supervisor, or
11 employer under whom the unlicensed person operates or from whom
12 the unlicensed person obtains the tangible personal property sold
13 by the unlicensed person, irrespective of whether the unlicensed
14 person is making sales on the unlicensed person's own behalf or
15 on behalf of the dealer, distributor, supervisor, or employer,
16 the department may so regard the unlicensed person and may regard
17 the dealer, distributor, supervisor, or employer as making sales
18 at retail at the retail price for the purposes of this act