



# HOUSE BILL No. 5047

September 14, 1995, Introduced by Reps. McNutt, Randall, Schroer, McBryde, Bush, Voorhees, Rhead, Martinez and Tesanovich and referred to the Committee on Tax Policy.

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 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. 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 sec-  
12 tions 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. However, a vehicle purchased by the school shall be  
17 certified for driver education and shall not be reassigned for  
18 personal use of the school's administrative personnel. For a  
19 dealer selling a new car or truck, the exemption for demonstra-  
20 tion purposes shall be determined by the number of new cars and  
21 trucks sold during the current calendar year or the immediately  
22 preceding year without regard to specific make or style in  
23 accordance with the following schedule of 0 to 25, 2 units; 26 to  
24 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but  
25 not to exceed 25 cars and trucks in a calendar year for demon-  
26 stration 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.  
6 ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, A nonprofit  
7 hospital or nonprofit housing includes only the property of a  
8 nonprofit hospital or the homes or dwelling places constructed by  
9 a nonprofit housing entity qualified as exempt pursuant to sec-  
10 tion 15a of the state housing development authority act of 1966,  
11 Act No. 346 of the Public Acts of 1966, ~~as amended,~~ being sec-  
12 tion 125.1415a of the Michigan Compiled Laws, the income or prop-  
13 erty of which does not directly or indirectly inure to the bene-  
14 fit of an individual, private stockholder, or other private  
15 person. FOR TAX YEARS ENDING AFTER DECEMBER 31, 1990, NONPROFIT  
16 HOUSING INCLUDES A MULTIPLE UNIT DWELLING OWNED BY A CITY, VIL-  
17 LAGE, TOWNSHIP, OR COUNTY, THE INCOME OR PROPERTY OF WHICH DOES  
18 NOT DIRECTLY OR INDIRECTLY INURE TO THE BENEFIT OF AN INDIVIDUAL,  
19 PRIVATE STOCKHOLDER, OR OTHER PRIVATE PERSON.

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

24 (e) "Sale at retail" includes the sale of electricity, natu-  
25 ral or artificial gas, or steam if made to the consumer or user  
26 for consumption or use rather than for resale. Sale at retail  
27 does not include the sale of water through water mains or the

1 sale of water delivered in bulk tanks in quantities of not less  
2 than 500 gallons.

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

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

23       (h) "Gross proceeds" means the amount received in money,  
24 credits, subsidies, property, or other money's worth in consider-  
25 ation of a sale at retail within this state, without a deduction  
26 for the cost of the property sold, the cost of material used, the  
27 cost of labor or service purchased, an amount paid for interest

1 or a discount, a tax paid on cigarettes or tobacco products at  
2 the time of purchase, a tax paid on beer or liquor at the time of  
3 purchase or other expenses. Also, a deduction is not allowed for  
4 losses. Gross proceeds does not include an amount received or  
5 billed by the taxpayer for remittance to the employee as a gratu-  
6 ity or tip, if the gratuity or tip is separately identified and  
7 itemized on the guest check or billed to the customer. In a tax-  
8 able sale at retail of a motor vehicle, if another motor vehicle  
9 is used as part payment of the purchase price, the value of the  
10 motor vehicle used as part payment of the purchase price shall be  
11 that value agreed to by the parties to the sale as evidenced by  
12 the signed statement executed pursuant to section 251 of the  
13 Michigan vehicle code, Act No. 300 of the Public Acts of 1949,  
14 ~~as amended,~~ being section 257.251 of the Michigan Compiled  
15 Laws. A credit or refund for returned goods or a refund less an  
16 allowance for use made for a motor vehicle returned under Act  
17 No. 87 of the Public Acts of 1986, being sections 257.1401 to  
18 257.1410 of the Michigan Compiled Laws, as certified by the manu-  
19 facturer on a form provided by the department of treasury, may be  
20 deducted.

21 (i) "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.

19       (3) A CITY, VILLAGE, TOWNSHIP, OR COUNTY THAT PAID THE TAX  
20 LEVIED UNDER THIS ACT IN TAX YEARS ENDING AFTER DECEMBER 31, 1990  
21 ON TANGIBLE PERSONAL PROPERTY AFFIXED TO AND MADE A STRUCTURAL  
22 PART OF NONPROFIT HOUSING THAT IS A MULTIPLE UNIT DWELLING OWNED  
23 BY THAT CITY, VILLAGE, TOWNSHIP, OR COUNTY, THE INCOME OR PROP-  
24 ERTY OF WHICH DOES NOT DIRECTLY OR INDIRECTLY INURE TO THE BENE-  
25 FIT OF AN INDIVIDUAL, PRIVATE STOCKHOLDER, OR OTHER PRIVATE  
26 PERSON, MAY FILE A CLAIM FOR A REFUND OF THAT TAX WITH THE

1 DEPARTMENT OF TREASURY WITHIN 60 DAYS OF THE EFFECTIVE DATE OF  
2 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.