



SENATE BILL No. 253

February 8, 1995, Introduced by Senators SHUGARS, BOUCHARD, NORTH, ROGERS, HOFFMAN, CARL, GOUGEON, STILLE, GAST, GEAKE, SCHWARZ, BYRUM, DINGELL, YOUNG, CHERRY, STALLINGS, KOIVISTO, BERRYMAN, STEIL, DUNASKISS and BENNETT and referred to the Committee on Finance.

A bill to amend sections 1, 7, and 7a of Act No. 167 of the Public Acts of 1933, entitled as amended

"General sales tax act,"

section 1 as amended by Act No. 127 of the Public Acts of 1994 and sections 7 and 7a as added by Act No. 32 of the Public Acts of 1984, being sections 205.51, 205.57, and 205.57a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 7, and 7a of Act No. 167 of the
2 Public Acts of 1933, section 1 as amended by Act No. 127 of the
3 Public Acts of 1994 and sections 7 and 7a as added by Act No. 32
4 of the Public Acts of 1984, being sections 205.51, 205.57, and
5 205.57a of the Michigan Compiled Laws, are amended to read as
6 follows:

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

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

10 (b) "Sale at retail" means a transaction by which the owner-
11 ship of tangible personal property is transferred for considera-
12 tion, if the transfer is made in the ordinary course of the
13 transferor's business and is made to the transferee for consump-
14 tion or use, or for any purpose other than for resale, or for
15 lease, if the rental receipts are taxable under the use tax act,
16 Act No. 94 of the Public Acts of 1937, ~~as amended,~~ being sec-
17 tions 205.91 to 205.111 of the Michigan Compiled Laws, in the
18 form of tangible personal property to a person licensed under
19 this act, or for demonstration purposes or lending or leasing to
20 a public or parochial school offering a course in automobile
21 driving. However, a vehicle purchased by the school shall be
22 certified for driver education and shall not be reassigned for
23 personal use of the school's administrative personnel. For a
24 dealer selling a new car or truck, the exemption for demonstra-
25 tion purposes shall be determined by the number of new cars and
26 trucks sold during the current calendar year or the immediately
27 preceding year without regard to specific make or style in

1 accordance with the following schedule of 0 to 25, 2 units; 26 to
2 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but
3 not to exceed 25 cars and trucks in a calendar year for demon-
4 stration purposes.

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

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

23 (e) "Sale at retail" includes the sale of electricity, natu-
24 ral or artificial gas, or steam if made to the consumer or user
25 for consumption or use rather than for resale. Sale at retail
26 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 gratuity
6 or tip, if the gratuity or tip is separately identified and
7 itemized on the guest check or billed to the customer. In a taxable
8 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. IF A MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF
16 HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
17 WATERCRAFT IS USED AS PART PAYMENT IN A TAXABLE SALE AT RETAIL OF
18 ANOTHER MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY
19 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATER-
20 CRAFT, RESPECTIVELY, THE GROSS PROCEEDS IS THE DIFFERENCE BETWEEN
21 THE AGREED-UPON VALUE OF THE MOTOR VEHICLE, AIRCRAFT,
22 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
23 TIONAL VEHICLE, OR TITLED WATERCRAFT USED AS PART PAYMENT OF THE
24 PURCHASE PRICE AND THE FULL RETAIL PRICE OF THE MOTOR VEHICLE,
25 AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT,
26 RECREATIONAL VEHICLE, OR TITLED WATERCRAFT BEING PURCHASED. A
27 credit or refund for returned goods or a refund less an allowance

1 for use made for a motor vehicle returned under Act No. 87 of the
2 Public Acts of 1986, being sections 257.1401 to 257.1410 of the
3 Michigan Compiled Laws, as certified by the manufacturer on a
4 form provided by the department of treasury, 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 (N) "RECREATIONAL VEHICLE" INCLUDES A TRAILER COACH, CONVEN-
19 TIONAL TRAVEL TRAILER, PARK TRAILER, FIFTH-WHEEL TRAVEL TRAILER,
20 FOLDING CAMPING TRAILER, TRUCK CAMPER, MOTOR HOME, VAN CAMPER,
21 VAN CONVERSION, OR MULTIUSE VEHICLE.

22 (2) If the department determines that it is necessary for
23 the efficient administration of this act to regard an unlicensed
24 person, including a salesperson, representative, peddler, or can-
25 vasser as the agent of the dealer, distributor, supervisor, or
26 employer under whom the unlicensed person operates or from whom
27 the unlicensed person obtains the tangible personal property sold

1 by the unlicensed person, irrespective of whether the unlicensed
2 person is making sales on the unlicensed person's own behalf or
3 on behalf of the dealer, distributor, supervisor, or employer,
4 the department may so regard the unlicensed person and may regard
5 the dealer, distributor, supervisor, or employer as making sales
6 at retail at the retail price for the purposes of this act.

7 Sec. 7. (1) Upon purchase of a motor vehicle, AIRCRAFT,
8 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
9 TIONAL VEHICLE, OR TITLED WATERCRAFT by a new ~~vehicle~~ dealer or
10 a used or secondhand ~~vehicle~~ dealer ~~made on or after March 1,~~
11 ~~1984 and on or before February 1, 1985~~ that is not part of a
12 transaction in which the dealer also sells a motor vehicle, AIR-
13 CRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, REC-
14 REATIONAL VEHICLE, OR TITLED WATERCRAFT and provides the state-
15 ment specifying the amount credited the buyer for a trade-in as
16 required by section 251 of THE MICHIGAN VEHICLE CODE, Act No. 300
17 of the Public Acts of 1949, being section 257.251 of the Michigan
18 Compiled Laws, the dealer shall provide the owner of the motor
19 vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR
20 EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATERCRAFT who is
21 selling the motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF
22 HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
23 WATERCRAFT to the dealer with a certificate, signed by each
24 party, specifying all of the following information:

25 (a) The year, make, model, and ~~vehicle~~ identification
26 number of the motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF

1 HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
2 WATERCRAFT.

3 (b) The name and address of each party.

4 (c) The dealer's license number.

5 (d) The price paid for the motor vehicle, AIRCRAFT,

6 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
7 TIONAL VEHICLE, OR TITLED WATERCRAFT.

8 (e) The date ~~the dealer purchased the motor vehicle~~ OF
9 PURCHASE.

10 (f) A statement indicating that the seller may present the
11 certificate when purchasing ~~a new~~ ANOTHER motor vehicle, AIR-
12 CRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, REC-
13 REATIONAL VEHICLE, OR TITLED WATERCRAFT within 90 days after the
14 date specified on the certificate from a person licensed under
15 this act to reduce the gross proceeds upon which the taxpayer is
16 taxed and may reimburse himself or herself.

17 (2) A person receiving a certificate prescribed by this sec-
18 tion upon the sale of ~~their~~ HIS OR HER motor vehicle, AIRCRAFT,
19 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
20 TIONAL VEHICLE, OR TITLED WATERCRAFT to a new ~~vehicle~~ dealer or
21 a used or secondhand ~~vehicle~~ dealer may present the certificate
22 to a person subject to tax under this act upon purchasing ~~a new~~
23 ANOTHER motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY
24 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
25 WATERCRAFT within 90 days after the date on the certificate as
26 the date the person sold ~~their~~ HIS OR HER MOTOR vehicle,
27 AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT,

1 RECREATIONAL VEHICLE, OR TITLED WATERCRAFT to a dealer. A
2 certificate presented at a sale at retail shall reduce, pursuant
3 to section 1, the gross proceeds of the sale at retail for which
4 the certificate was presented and shall reduce the basis on which
5 the taxpayer may reimburse himself or herself by adding any tax
6 levied by this act on the sale at retail to the sale price.
7 Except as provided by this section, a certificate issued pursuant
8 to this section ~~shall~~ IS not ~~be~~ transferable.

9 (3) A person subject to tax under this act who, upon making
10 a sale at retail of a ~~new~~ motor vehicle, AIRCRAFT,
11 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
12 TIONAL VEHICLE, OR TITLED WATERCRAFT, receives from the purchaser
13 a completed certificate that evidences a sale of a motor vehicle,
14 AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT,
15 RECREATIONAL VEHICLE, OR TITLED WATERCRAFT by the purchaser to a
16 new ~~vehicle~~ dealer or a used or secondhand dealer within 90
17 days before the sale at retail shall note the date of the sale at
18 retail for which the certificate was presented upon the certifi-
19 cate and forward the certificate with any tax liability of the
20 taxpayer on the sale at retail for which the certificate was
21 presented.

22 (4) The department shall prescribe and distribute certifi-
23 cates to be used for purposes of this section.

24 (5) For purposes of section 27 of Act No. 122 of the Public
25 Acts of 1941, being section 205.27 of the Michigan Compiled Laws,
26 and the penalties provided by that section, a certificate under
27 this section ~~shall be~~ IS considered a return.

1 Sec. 7a. (1) Upon the purchase from a private individual of
2 a used or secondhand motor vehicle, AIRCRAFT, SELF-PROPELLED
3 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR
4 TITLED WATERCRAFT by an individual who is not a new ~~vehicle~~
5 dealer, or a used or secondhand ~~vehicle~~ dealer ~~, made on or~~
6 ~~after March 1, 1984 and on or before February 1, 1985,~~ and upon
7 the request of the seller, both parties to the transaction shall
8 sign a certificate to be provided by the seller specifying all of
9 the following:

10 (a) The year, make, model, and ~~vehicle~~ identification
11 number of the motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF
12 HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
13 WATERCRAFT.

14 (b) The name and address of each party.

15 (c) The price paid for the motor vehicle, AIRCRAFT,
16 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
17 TIONAL VEHICLE, OR TITLED WATERCRAFT.

18 (d) The date ~~the individual purchased the motor vehicle~~ OF
19 PURCHASE.

20 (e) A statement indicating that when purchasing ~~a new~~
21 ANOTHER motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY
22 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
23 WATERCRAFT within 90 days after the date specified on the certif-
24 icate from a person licensed and subject to tax under this act,
25 the seller of the used MOTOR vehicle, AIRCRAFT, SELF-PROPELLED
26 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR
27 TITLED WATERCRAFT may present the certificate to the taxpayer to

1 reduce the gross proceeds upon which the taxpayer is taxed and to
2 reduce the amount by which the taxpayer is reimbursed.

3 (2) A person receiving a certificate pursuant to subsection
4 (1) upon the sale of ~~their~~ HIS OR HER motor vehicle, AIRCRAFT,
5 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
6 TIONAL VEHICLE, OR TITLED WATERCRAFT to another individual may
7 present the certificate to a person subject to tax under this act
8 upon purchasing ~~a new~~ ANOTHER motor vehicle, AIRCRAFT,
9 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
10 TIONAL VEHICLE, OR TITLED WATERCRAFT within 90 days after the
11 date of sale of the used MOTOR vehicle, AIRCRAFT, SELF-PROPELLED
12 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR
13 TITLED WATERCRAFT specified on the certificate. A certificate
14 presented at a sale at retail shall reduce, pursuant to
15 section 1, the gross proceeds of the sale at retail for which the
16 certificate was presented and shall reduce the basis on which the
17 taxpayer may reimburse himself or herself by adding any tax
18 levied by this act on the sale at retail to the sale price.
19 Except as provided by this section, a certificate issued pursuant
20 to this section ~~shall~~ IS not ~~be~~ transferable.

21 (3) If a person subject to tax under this act makes a sale
22 at retail and receives from the purchaser a certificate evidenc-
23 ing a prior sale of a used MOTOR vehicle, AIRCRAFT,
24 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
25 TIONAL VEHICLE, OR TITLED WATERCRAFT, the taxpayer shall note the
26 date of the prior sale on the certificate. If the sale of the
27 used MOTOR vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY

1 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
2 WATERCRAFT occurred within 90 days before the sale at retail, the
3 taxpayer shall forward the certificate with any tax liability of
4 the taxpayer on the sale at retail for which the certificate was
5 presented to the department.

6 (4) The department shall prescribe and distribute certifi-
7 cates to be used for purposes of this section. Certificates
8 shall be available at all offices of the secretary of state.

9 (5) For purposes of section 27 of Act No. 122 of the Public
10 Acts of 1941, being section 205.27 of the Michigan Compiled Laws,
11 and the penalties provided by that section, a certificate under
12 this section ~~shall be~~ IS considered a return.