



# SENATE BILL No. 512

May 9, 1995, Introduced by Senators GEAKE, YOUNG, SHUGARS and O'BRIEN and referred to the Committee on Finance.

A bill to amend sections 1, 4a, and 9 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, section 4a as amended by Act No. 156 of the Public Acts of 1994, and section 9 as amended by Act No. 87 of the Public Acts of 1991, being sections 205.51, 205.54a, and 205.59 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 4a, and 9 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, section 4a as amended by Act No. 156 of the  
4 Public Acts of 1994, and section 9 as amended by Act No. 87 of  
5 the Public Acts of 1991, being sections 205.51, 205.54a, and

1 205.59 of the Michigan Compiled Laws, are amended to read as  
2 follows:

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

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

12       (b) "Sale at retail" means a transaction by which the owner-  
13 ship of tangible personal property is transferred for considera-  
14 tion, if the transfer is made in the ordinary course of the  
15 transferor's business and is made to the transferee for consump-  
16 tion or use, or for any purpose other than for resale, or for  
17 lease, if the rental receipts are taxable under the use tax act,  
18 Act No. 94 of the Public Acts of 1937, ~~as amended,~~ being sec-  
19 tions 205.91 to 205.111 of the Michigan Compiled Laws, in the  
20 form of tangible personal property to a person licensed under  
21 this act, or for demonstration purposes or lending or leasing to  
22 a public or parochial school offering a course in automobile  
23 driving. However, a vehicle purchased by the school shall be  
24 certified for driver education and shall not be reassigned for  
25 personal use of the school's administrative personnel. For a  
26 dealer selling a new car or truck, the exemption for  
27 demonstration purposes shall be determined by the number of new

1 cars and trucks sold during the current calendar year or the  
2 immediately preceding year without regard to specific make or  
3 style in accordance with the following schedule of 0 to 25, 2  
4 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25  
5 units; but not to exceed 25 cars and trucks in a calendar year  
6 for demonstration purposes.

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

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

25 (e) "Sale at retail" includes the sale of electricity, natu-  
26 ral or artificial gas, or steam if made to the consumer or user  
27 for consumption or use rather than for resale. Sale at retail

1 does not include the sale of water through water mains or the  
2 sale of water delivered in bulk tanks in quantities of not less  
3 than 500 gallons.

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

20 (G) "SALE AT RETAIL" INCLUDES THE LAUNDERING OR CLEANING OF  
21 TEXTILES UNDER A SALE, RENTAL, OR SERVICE AGREEMENT WITH A TERM  
22 OF AT LEAST 5 DAYS.

23 (H) ~~(g)~~ "Sale at retail" does not include an isolated  
24 transaction by a person not licensed or required to be licensed  
25 under this act, in which tangible personal property is offered  
26 for sale, sold, transferred, and delivered by the owner.

1 (I) ~~(h)~~ "Gross proceeds" means the amount received in  
2 money, credits, subsidies, property, or other money's worth in  
3 consideration of a sale at retail within this state, without a  
4 deduction for the cost of the property sold, the cost of material  
5 used, the cost of labor or service purchased, an amount paid for  
6 interest or a discount, a tax paid on cigarettes or tobacco prod-  
7 ucts at the time of purchase, a tax paid on beer or liquor at the  
8 time of purchase or other expenses. Also, a deduction is not  
9 allowed for losses. Gross proceeds does not include an amount  
10 received or billed by the taxpayer for remittance to the employee  
11 as a gratuity or tip, if the gratuity or tip is separately iden-  
12 tified and itemized on the guest check or billed to the  
13 customer. In a taxable sale at retail of a motor vehicle, if  
14 another motor vehicle is used as part payment of the purchase  
15 price, the value of the motor vehicle used as part payment of the  
16 purchase price shall be that value agreed to by the parties to  
17 the sale as evidenced by the signed statement executed pursuant  
18 to section 251 of the Michigan vehicle code, Act No. 300 of the  
19 Public Acts of 1949, ~~as amended,~~ being section 257.251 of the  
20 Michigan Compiled Laws. A credit or refund for returned goods or  
21 a refund less an allowance for use made for a motor vehicle  
22 returned under Act No. 87 of the Public Acts of 1986, being  
23 sections 257.1401 to 257.1410 of the Michigan Compiled Laws, as  
24 certified by the manufacturer on a form provided by the depart-  
25 ment of treasury, may be deducted.

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

4           (K) ~~(j)~~ "Tax year" or "taxable year" means the fiscal year  
5 of the state or the taxpayer's fiscal year if permission is  
6 obtained by the taxpayer from the department to use the  
7 taxpayer's fiscal year as the tax period instead.

8           (L) ~~(k)~~ "Department" means the revenue division of the  
9 department of treasury.

10          (M) ~~(l)~~ "Taxpayer" means a person subject to a tax under  
11 this act.

12          (N) ~~(m)~~ "Tax" includes a tax, interest, or penalty levied  
13 under this act.

14          (O) "TEXTILES" MEANS GOODS THAT ARE MADE OF OR INCORPORATE  
15 WOVEN OR NONWOVEN FABRIC, INCLUDING, BUT NOT LIMITED TO, CLOTH-  
16 ING, SHOES, HATS, HANDKERCHIEFS, CURTAINS, TOWELS, SHEETS, PIL-  
17 LOWS, PILLOW CASES, TABLECLOTHS, NAPKINS, APRONS, LINENS, FLOOR  
18 MOPS, FLOOR MATS, AND THREAD. TEXTILES ALSO INCLUDE MATERIALS  
19 USED TO REPAIR OR CONSTRUCT TEXTILES, OR OTHER GOODS USED IN THE  
20 RENTAL, SALE, OR CLEANING OF TEXTILES.

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

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

6       Sec. 4a. A person subject to tax under this act may exclude  
7 from the amount of the gross proceeds used for the computation of  
8 the tax, sales of tangible personal property:

9       (a) Not for resale, and when not operated for profit, to a  
10 school, hospital, or home for the care and maintenance of chil-  
11 dren or aged persons operated by an entity of government, a regu-  
12 larly organized church, religious, or fraternal organization, a  
13 veterans' organization, or a corporation incorporated under the  
14 laws of the state, if the income or benefit from the operation  
15 does not inure, in whole or in part, to an individual or private  
16 shareholder, directly or indirectly, and if the activities of the  
17 entity or agency are carried on exclusively for the benefit of  
18 the public at large and are not limited to the advantage, inter-  
19 ests, and benefits of its members or any restricted group. At  
20 the time of the transfer of this tangible personal property, the  
21 transferee shall sign a statement, in a form approved by the  
22 department, stating that the property is to be used or consumed  
23 in connection with the operation of the institution or agency and  
24 that the institution or agency qualifies as an exempt entity  
25 under this subdivision. The statement shall be accepted by all  
26 courts as prima facie evidence of the exemption and the statement  
27 shall provide that if the claim for tax exemption is disallowed

1 the transferee will reimburse the transferor for the amount of  
2 tax involved. A sale of tangible personal property to a parent  
3 cooperative preschool is exempt from taxation under this act. As  
4 used in this subdivision, "parent cooperative preschool" means a  
5 nonprofit, nondiscriminatory educational institution, maintained  
6 as a community service and administered by parents of children  
7 currently enrolled in the preschool, that provides an educational  
8 and developmental program for children younger than compulsory  
9 school age, that provides an educational program for parents,  
10 including active participation with children in preschool activi-  
11 ties, that is directed by qualified preschool personnel, and that  
12 is licensed by the department of social services pursuant to Act  
13 No. 116 of the Public Acts of 1973, ~~as amended,~~ being sections  
14 722.111 to 722.128 of the Michigan Compiled Laws.

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

17 (i) Sales in activities that are mainly commercial  
18 enterprises.

19 (ii) Sales of vehicles licensed for use on public highways  
20 other than a passenger van or bus with a manufacturer's rated  
21 seating capacity of 10 or more that is used primarily for the  
22 transportation of persons for religious purposes.

23 (c) To bona fide enrolled students, of food by a school or  
24 other educational institution not operated for profit.

25 (d) Affixed to and made a structural part of real estate  
26 excepted from the definition of "sale at retail" under section  
27 1(1)(c).

1 (e) To persons, of a vessel designated for commercial use of  
2 registered tonnage of 500 tons or more, if produced upon special  
3 order of the purchaser, and bunker and galley fuel, provisions,  
4 supplies, maintenance, and repairs for the exclusive use of the  
5 vessel engaged in interstate commerce.

6 (f) To persons engaged in a business enterprise and using or  
7 consuming the tangible personal property in the tilling, plant-  
8 ing, caring for, or harvesting of the things of the soil; in the  
9 breeding, raising, or caring for livestock, poultry, or horticult-  
10 tural products, including transfers of livestock, poultry, or  
11 horticultural products for further growth; or in the direct gath-  
12 ering of fish, by net, line, or otherwise only by an  
13 owner-operator of the business enterprise, not including a  
14 charter fishing business enterprise. This exemption includes  
15 agricultural land tile, which means fired clay or perforated  
16 plastic tubing used as part of a subsurface drainage system for  
17 land, and subsurface irrigation pipe, if the land tile or irriga-  
18 tion pipe is used in the production of agricultural products as a  
19 business enterprise. At the time of the transfer of this tangi-  
20 ble personal property, the transferee shall sign a statement, in  
21 a form approved by the department, stating that the property is  
22 to be used or consumed in connection with the production of  
23 horticultural or agricultural products as a business enterprise,  
24 or in connection with fishing as an owner-operator business  
25 enterprise. The statement shall be accepted by all courts as  
26 prima facie evidence of the exemption. This exemption includes a  
27 portable grain bin, which means a structure that is used or is to

1 be used to shelter grain and that is designed to be disassembled  
2 without significant damage to its component parts. This exemp-  
3 tion does not include transfers of food, fuel, clothing, or any  
4 similar tangible personal property for personal living or human  
5 consumption. This exemption does not include tangible personal  
6 property permanently affixed and becoming a structural part of  
7 real estate.

8 (g) To the following:

9 (i) An industrial processor for use or consumption in indus-  
10 trial processing. Property used or consumed in industrial pro-  
11 cessing does not include tangible personal property permanently  
12 affixed and becoming a structural part of real estate; office  
13 furniture, office supplies, and administrative office equipment;  
14 or vehicles licensed and titled for use on public highways, other  
15 than a specially designed vehicle, together with parts, used to  
16 mix and agitate materials added at a plant or jobsite in the con-  
17 crete manufacturing process. Industrial processing does not  
18 include receiving and storage of raw materials purchased or  
19 extracted by the user or consumer; or the preparation of food and  
20 beverages by a retailer for retail sale. As used in this subdi-  
21 vision, "industrial processor" means a person who transforms,  
22 alters, or modifies tangible personal property by changing the  
23 form, composition, or character of the property for ultimate sale  
24 at retail or sale to another industrial processor to be further  
25 processed for ultimate sale at retail. EFFECTIVE JANUARY 1,  
26 1993, INDUSTRIAL PROCESSOR INCLUDES, BUT IS NOT LIMITED TO, A  
27 PERSON WHO LAUNDERS OR CLEANS TEXTILES FOR REUSE, SALE, OR RENTAL

1 UNDER A SERVICE OR RENTAL AGREEMENT WITH A TERM OF AT LEAST 5  
2 DAYS. Sales to a person performing a service who does not act as  
3 an industrial processor while performing this service shall not  
4 be excluded under this subdivision except as provided in subpara-  
5 graph (ii).

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

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

1 includes an advertising supplement inserted into and circulated  
2 with a newspaper or periodical that is otherwise exempt from tax  
3 under this subdivision, if the advertising supplement is deliv-  
4 ered directly to the newspaper or periodical by a person other  
5 than the advertiser, or the advertising supplement is printed by  
6 the newspaper or periodical.

7 (i) To persons licensed to operate commercial radio or tele-  
8 vision stations if the property is used in the origination or  
9 integration of the various sources of program material for com-  
10 mercial radio or television transmission. This subdivision does  
11 not include a vehicle licensed and titled for use on public high-  
12 ways or property used in the transmission to or receiving from an  
13 artificial satellite.

14 (j) A hearing aid, contact lenses if prescribed for a spe-  
15 cific disease that precludes the use of eyeglasses, or any other  
16 apparatus, device, or equipment used to replace or substitute for  
17 a part of the human body, or used to assist the disabled person  
18 to lead a reasonably normal life if the tangible personal prop-  
19 erty is purchased on a written prescription or order issued by a  
20 ~~licensed~~ health professional as defined by section 21005 of the  
21 public health code, Act No. 368 of the Public Acts of 1978, being  
22 section 333.21005 of the Michigan Compiled Laws, or eyeglasses  
23 prescribed or dispensed to correct the person's vision by an oph-  
24 thalmologist, optometrist, or optician.

25 (k) To persons for use or consumption in the rendition of a  
26 service, the use or consumption of which is taxable under section  
27 3a(a) of the use tax act, Act No. 94 of the Public Acts of 1937,

1 ~~as amended,~~ being section 205.93a of the Michigan Compiled  
2 Laws, except that this exemption is limited to the tangible per-  
3 sonal property located on the premises of the subscriber and the  
4 necessary exchange equipment.

5 (l) ~~Not for resale of a~~ A vehicle, NOT FOR RESALE, to a  
6 Michigan nonprofit corporation organized exclusively to provide a  
7 community with ambulance or fire department services.

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

10 (n) To or for the use of students enrolled in any part of a  
11 kindergarten through twelfth grade program, of textbooks sold by  
12 a public or nonpublic school.

13 (o) ~~Installed as a component~~ TO COMPONENTS INSTALLED AS  
14 part of a water pollution control facility for which a tax exemp-  
15 tion certificate is issued pursuant to Act No. 222 of the Public  
16 Acts of 1966, ~~as amended,~~ being sections 323.351 to 323.358 of  
17 the Michigan Compiled Laws, or an air pollution control facility  
18 for which a tax exemption certificate is issued pursuant to Act  
19 No. 250 of the Public Acts of 1965, ~~as amended,~~ being sections  
20 336.1 to 336.8 of the Michigan Compiled Laws.

21 (p) To a purchaser of a new motor vehicle purchased before  
22 January 1, 1993 if the purchaser qualifies for a special regis-  
23 tration under section 226(12) of the Michigan vehicle code, Act  
24 No. 300 of the Public Acts of 1949, being section 257.226 of the  
25 Michigan Compiled Laws, and the vehicle is purchased through a  
26 country determined by the department to be providing a like or

1 complete exemption for the purchase of a new motor vehicle to be  
2 removed from that country.

3       Sec. 9. (1) The tax imposed by this act shall be adminis-  
4 tered by the commissioner pursuant to Act No. 122 of the Public  
5 Acts of 1941, ~~as amended,~~ being sections 205.1 to 205.31 of the  
6 Michigan Compiled Laws, and this act. In case of conflict  
7 between the provisions of Act No. 122 of the Public Acts of 1941  
8 ~~, as amended,~~ and this act, the provisions of this act shall  
9 prevail.

10       (2) The department shall promulgate rules ~~under~~ TO  
11 IMPLEMENT this act pursuant to the administrative procedures act  
12 of 1969, Act No. 306 of the Public Acts of 1969, ~~as amended,~~  
13 being sections 24.201 to 24.328 of the Michigan Compiled Laws.

14       (3) A claim for a refund ~~pursuant to~~ UNDER the 1991 amen-  
15 datory act amending section 4a to provide for the exemption of  
16 subsurface irrigation pipe shall be filed not later than  
17 September 30, 1991. The approved refunds shall be paid without  
18 interest.

19       (4) A CLAIM FOR A REFUND UNDER THE 1995 AMENDATORY ACT  
20 AMENDING SECTION 4A TO INCLUDE A PERSON WHO LAUNDERS OR CLEANS  
21 TEXTILES FOR REUSE, SALE, OR RENTAL UNDER A SERVICE AGREEMENT  
22 WITH A TERM OF AT LEAST 5 DAYS WITHIN THE EXEMPTION FOR AN INDUS-  
23 TRIAL PROCESSOR SHALL BE FILED NOT LATER THAN 90 DAYS AFTER THE  
24 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.