



SENATE BILL No. 1132

September 12, 1996, Introduced by Senator SHUGARS and referred to the Committee on Health Policy and Senior Citizens.

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. 209 of the Public Acts of 1995, 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. 209 of the Public Acts of 1995, 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
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, being sections 205.91 to
12 205.111 of the Michigan Compiled Laws, in the form of tangible
13 personal property to a person licensed under this act, or for
14 demonstration purposes or lending or leasing to a public or paro-
15 chial school offering a course in automobile driving. However, a
16 vehicle purchased by the school shall be certified for driver
17 education and shall not be reassigned for personal use of the
18 school's administrative personnel. For a dealer selling a new
19 car or truck, the exemption for demonstration purposes shall be
20 determined by the number of new cars and trucks sold during the
21 current calendar year or the immediately preceding year without
22 regard to specific make or style in accordance with the following
23 schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20
24 units; 501 or more, 25 units; but not to exceed 25 cars and
25 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, being section
9 125.1415a of the Michigan Compiled Laws, the income or property
10 of which does not directly or indirectly inure to the benefit of
11 an individual, private stockholder, or other private person. AS
12 USED IN THIS SUBDIVISION, "HOSPITAL" MEANS A SEPARATELY ORGANIZED
13 INSTITUTION OR ESTABLISHMENT THE PRIMARY ACTIVITY OF WHICH IS
14 PROVIDING ACUTE MEDICAL CARE AND NURSING CARE. ACUTE MEDICAL
15 CARE IS LIMITED TO CARE OF A MEDICAL CONDITION, INCLUDING
16 OBSTETRICAL, PSYCHIATRIC, OR SURGICAL CARE, THAT REQUIRES A
17 PHYSICIAN'S ATTENTION ON NOT LESS THAN A DAILY BASIS. THE
18 EXEMPTION OF THE SALE OF TANGIBLE PERSONAL PROPERTY AFFIXED TO
19 AND MADE A STRUCTURAL PART OF THE REAL ESTATE OF A NONPROFIT
20 HOSPITAL UNDER THIS SUBDIVISION IS LIMITED TO PERSONAL PROPERTY
21 AFFIXED TO REAL ESTATE THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE
22 ACUTE MEDICAL CARE AND NURSING CARE.

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

1 (e) "Sale at retail" includes the sale of electricity,
2 natural or artificial gas, or steam if made to the consumer or
3 user for consumption or use rather than for resale. Sale at
4 retail does not include the sale of water through water mains or
5 the sale of water delivered in bulk tanks in quantities of not
6 less than 500 gallons.

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

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

1 (h) "Sale at retail" does not include a commercial
2 advertising element if the commercial advertising element is used
3 to create or develop a print, radio, television, or other adver-
4 tisement, the commercial advertising element is discarded or
5 returned to the provider after the advertising message is com-
6 pleted, and the commercial advertising element is custom devel-
7 oped by the provider for the purchaser. As used in this subdivi-
8 sion, "commercial advertising element" means a negative or posi-
9 tive photographic image, an audiotape or videotape master, a
10 layout, a manuscript, writing of copy, a design, artwork, an
11 illustration, retouching, and mechanical or keyline
12 instructions. "Sale at retail" includes black and white or full
13 color process separation elements, an audiotape reproduction, or
14 a videotape reproduction.

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

1 vehicle is used as part payment of the purchase price, the value
2 of the motor vehicle used as part payment of the purchase price
3 shall be that value agreed to by the parties to the sale as evi-
4 denced by the signed statement executed pursuant to section 251
5 of the Michigan vehicle code, Act No. 300 of the Public Acts of
6 1949, being section 257.251 of the Michigan Compiled Laws. A
7 credit or refund for returned goods or a refund less an allowance
8 for use made for a motor vehicle returned under Act No. 87 of the
9 Public Acts of 1986, being sections 257.1401 to 257.1410 of the
10 Michigan Compiled Laws, as certified by the manufacturer on a
11 form provided by the department of treasury, may be deducted.

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

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

19 (l) "Department" means the revenue division of the depart-
20 ment of treasury.

21 (m) "Taxpayer" means a person subject to a tax under this
22 act.

23 (n) "Tax" includes a tax, interest, or penalty levied under
24 this act.

25 (2) If the department determines that it is necessary for
26 the efficient administration of this act to regard an unlicensed
27 person, including a salesperson, representative, peddler, or

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