

**SUBSTITUTE FOR
HOUSE BILL NO. 5106**

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 1 (MCL 205.51), as amended by 1995 PA 209.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) As used in this act:
2 (a) "Person" means an individual, firm, partnership, LIMITED
3 LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, joint venture,
4 association, social club, fraternal organization, municipal or
5 private corporation, whether organized for profit or not, com-
6 pany, estate, trust, receiver, trustee, syndicate, the United
7 States, this state, county, or any other group or combination
8 acting as a unit, and includes the plural as well as the singular
9 number, unless the intention to give a more limited meaning is
10 disclosed by the context.

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1 (b) "Sale at retail" means a transaction by which the
2 ownership of tangible personal property is transferred for
3 consideration, if the transfer is made in the ordinary course of
4 the transferor's business and is made to the transferee for con-
5 sumption or use, or for any purpose other than for resale, or for
6 lease, if the rental receipts are taxable under the use tax act,
7 ~~Act No. 94 of the Public Acts of 1937, being sections 205.91 to~~
8 ~~205.111 of the Michigan Compiled Laws~~ 1937 PA 94, MCL 205.91 TO
9 205.111, in the form of tangible personal property to a person
10 licensed under this act, or for demonstration purposes or lending
11 or leasing to a public or parochial school offering a course in
12 automobile driving. However, a vehicle purchased by the school
13 shall be certified for driver education and shall not be reas-
14 signed for personal use of the school's administrative
15 personnel. For a dealer selling a new car or truck, the exemp-
16 tion for demonstration purposes shall be determined by the number
17 of new cars and trucks sold during the current calendar year or
18 the immediately preceding year without regard to specific make or
19 style in accordance with the following schedule of 0 to 25, 2
20 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25
21 units; but not to exceed 25 cars and trucks in a calendar year
22 for demonstration purposes.

23 (c) "Sale at retail" includes the sale of tangible personal
24 property to persons directly engaged in the business of con-
25 structing, altering, repairing, or improving real estate for
26 others except property affixed to and made a structural part of
27 the real estate of a nonprofit hospital or nonprofit housing. A

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1 nonprofit hospital or nonprofit housing includes only the
2 property of a nonprofit hospital or the homes or dwelling places
3 constructed by a nonprofit housing entity qualified as exempt
4 pursuant to section 15a of the state housing development author-
5 ity act of 1966, ~~Act No. 346 of the Public Acts of 1966, being~~
6 ~~section 125.1415a of the Michigan Compiled Laws~~ 1966 PA 346, MCL
7 125.1415A, the income or property of which does not directly or
8 indirectly inure to the benefit of an individual, private stock-
9 holder, or other private person.

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

14 (e) "Sale at retail" includes the sale of electricity, natu-
15 ral or artificial gas, or steam if made to the consumer or user
16 for consumption or use rather than for resale. Sale at retail
17 does not include the sale of water through water mains or the
18 sale of water delivered in bulk tanks in quantities of not less
19 than 500 gallons.

20 (f) "Sale at retail" includes computer software offered for
21 general sale to the public or software modified or adapted to the
22 user's needs or equipment by the seller, only if the software is
23 available for sale from a seller of software on an as is basis or
24 as an end product without modification or adaptation. Sale at
25 retail does not include specific charges for technical support or
26 for adapting or modifying prewritten, standard, or canned
27 computer software programs to a purchaser's needs or equipment if

1 those charges are separately stated and identified. Sale at
2 retail does not include computer software originally designed for
3 the exclusive use and special needs of the purchaser. As used in
4 this subdivision, "computer software" means a set of statements
5 or instructions that when incorporated in a machine usable medium
6 is capable of causing a machine or device having information pro-
7 cessing capabilities to indicate, perform, or achieve a particu-
8 lar function, task, or result.

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

13 (h) "Sale at retail" does not include a commercial advertis-
14 ing element if the commercial advertising element is used to
15 create or develop a print, radio, television, or other advertise-
16 ment, the commercial advertising element is discarded or returned
17 to the provider after the advertising message is completed, and
18 the commercial advertising element is custom developed by the
19 provider for the purchaser. As used in this subdivision,
20 "commercial advertising element" means a negative or positive
21 photographic image, an audiotape or videotape master, a layout, a
22 manuscript, writing of copy, a design, artwork, an illustration,
23 retouching, and mechanical or keyline instructions. "Sale at
24 retail" includes black and white or full color process separation
25 elements, an audiotape reproduction, or a videotape
26 reproduction.

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1 (i) "Gross proceeds" means the amount received in money,
2 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 pro-
7 ducts at the time of purchase, a tax paid on beer or liquor at
8 the 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, being section 257.251 of the Michigan~~
20 ~~Compiled Laws~~ 1949 PA 300, MCL 257.251. A credit or refund for
21 returned goods or a refund less an allowance for use made for a
22 motor vehicle returned under ~~Act No. 87 of the Public Acts of~~
23 ~~1986, being sections 257.1401 to 257.1410 of the Michigan~~
24 ~~Compiled Laws~~ 1986 PA 87, MCL 257.1401 TO 257.1410, as certified
25 by the manufacturer on a form provided by the department of trea-
26 sury, may be deducted.

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

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

8 (l) "Department" means the revenue division of the depart-
9 ment of treasury.

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

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

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