

SUBSTITUTE FOR
HOUSE BILL NO. 5212

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending sections 1, 4a, and 9 (MCL 205.51, 205.54a, and
205.59), section 1 as amended by 1997 PA 193, section 4a as
amended by 1996 PA 435, and section 9 as amended by 1991 PA 87.

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, 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.

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1 (b) "Sale at retail" means a transaction by which the
2 ownership of tangible personal property is transferred for con-
3 sideration, if the transfer is made in the ordinary course of the
4 transferor's business and is made to the transferee for consump-
5 tion 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 1937 PA 94, MCL 205.91 to 205.111, in the form of tangible per-
8 sonal property to a person licensed under this act, or for demon-
9 stration purposes or lending or leasing to a public or parochial
10 school offering a course in automobile driving. However, a vehi-
11 cle purchased by the school shall be certified for driver educa-
12 tion and shall not be reassigned for personal use of the school's
13 administrative personnel. For a dealer selling a new car or
14 truck, the exemption for demonstration purposes shall be deter-
15 mined by the number of new cars and trucks sold during the cur-
16 rent calendar year or the immediately preceding year without
17 regard to specific make or style in accordance with the following
18 schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20
19 units; 501 or more, 25 units; but not to exceed 25 cars and
20 trucks in a calendar year for demonstration purposes.

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

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1 constructed by a nonprofit housing entity qualified as exempt
2 pursuant to section 15a of the state housing development author-
3 ity act of 1966, 1966 PA 346, MCL 125.1415a, the income or prop-
4 erty of which does not directly or indirectly inure to the bene-
5 fit of an individual, private stockholder, or other private
6 person.

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

11 (e) "Sale at retail" includes the sale of electricity, natu-
12 ral or artificial gas, or steam if the sale is made to the con-
13 sumer or user for consumption or use rather than for resale.

14 Sale at retail also includes the sale of a prepaid telephone
15 calling card or a prepaid authorization number for telephone use,
16 rather than for resale. Sale at retail also includes the reau-
17 thorization of a prepaid telephone calling card or a prepaid
18 authorization number. Sale at retail does not include the sale
19 of water through water mains or the sale of water delivered in
20 bulk tanks in quantities of not less than 500 gallons.

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

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

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

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

17 (I) ~~(h)~~ "Sale at retail" does not include a commercial
18 advertising element if the commercial advertising element is used
19 to create or develop a print, radio, television, or other adver-
20 tisement, the commercial advertising element is discarded or
21 returned to the provider after the advertising message is com-
22 pleted, and the commercial advertising element is custom devel-
23 oped by the provider for the purchaser. As used in this subdivi-
24 sion, "commercial advertising element" means a negative or posi-
25 tive photographic image, an audiotape or videotape master, a
26 layout, a manuscript, writing of copy, a design, artwork, an
27 illustration, retouching, and mechanical or keyline

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1 instructions. Sale at retail includes black and white or full
2 color process separation elements, an audiotape reproduction, or
3 a videotape reproduction.

4 (J) ~~(i)~~ "Gross proceeds" means the amount received in
5 money, credits, subsidies, property, or other money's worth in
6 consideration of a sale at retail within this state, without a
7 deduction for the cost of the property sold, the cost of material
8 used, the cost of labor or service purchased, an amount paid for
9 interest or a discount, a tax paid on cigarettes or tobacco pro-
10 ducts at the time of purchase, a tax paid on beer or liquor at
11 the time of purchase or other expenses. Also, a deduction is not
12 allowed for losses. Gross proceeds ~~does~~ DO not include an
13 amount received or billed by the taxpayer for remittance to the
14 employee as a gratuity or tip, if the gratuity or tip is sepa-
15 rately identified and itemized on the guest check or billed to
16 the customer. In a taxable sale at retail of a motor vehicle, if
17 another motor vehicle is used as part payment of the purchase
18 price, the value of the motor vehicle used as part payment of the
19 purchase price shall be that value agreed to by the parties to
20 the sale as evidenced by the signed statement executed pursuant
21 to section 251 of the Michigan vehicle code, 1949 PA 300, MCL
22 257.251. A credit or refund for returned goods or a refund less
23 an allowance for use made for a motor vehicle returned under 1986
24 PA 87, MCL 257.1401 to 257.1410, as certified by the manufacturer
25 on a form provided by the department of treasury, may be
26 deducted.

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1 (K) ~~(j)~~ "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 (l) ~~(k)~~ "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 (M) ~~(i)~~ "Department" means the revenue division of the
9 department of treasury.

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

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

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

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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, a sale of tangible personal property:

9 (a) Not for resale to a nonprofit school, nonprofit hospi-
10 tal, or nonprofit home for the care and maintenance of children
11 or aged persons operated by an entity of government, a regularly
12 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

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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 consumer and industry services
13 pursuant to ~~Act No. 116 of the Public Acts of 1973, being sec-~~
14 ~~tions 722.111 to 722.128 of the Michigan Compiled Laws~~ 1973 PA
15 116, MCL 722.111 TO 722.128.

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

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

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

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

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1 (d) Affixed to and made a structural part of real estate
2 excepted from the definition of "sale at retail" under section
3 1(1)(c).

4 (e) That is a vessel designated for commercial use of regis-
5 tered tonnage of 500 tons or more, if produced upon special order
6 of the purchaser, and bunker and galley fuel, provisions, sup-
7 plies, maintenance, and repairs for the exclusive use of the
8 vessel engaged in interstate commerce.

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

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1 enterprise. The statement shall be accepted by all courts as
2 prima facie evidence of the exemption. This exemption includes a
3 portable grain bin, which means a structure that is used or is to
4 be used to shelter grain and that is designed to be disassembled
5 without significant damage to its component parts. This exemp-
6 tion does not include transfers of food, fuel, clothing, or any
7 similar tangible personal property for personal living or human
8 consumption. This exemption does not include tangible personal
9 property permanently affixed and becoming a structural part of
10 real estate.

11 (g) To the following:

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

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1 processed for ultimate sale at retail. EFFECTIVE JANUARY 1,
2 1993, INDUSTRIAL PROCESSOR INCLUDES, BUT IS NOT LIMITED TO, A
3 PERSON WHO LAUNDERS OR CLEANS TEXTILES FOR REUSE, SALE, OR RENTAL
4 UNDER A SERVICE OR RENTAL AGREEMENT WITH A TERM OF AT LEAST 5
5 DAYS. Sales to a person performing a service who does not act as
6 an industrial processor while performing this service shall not
7 be excluded under this subdivision except as provided in
8 ~~subparagraph~~ SUBPARAGRAPHS (ii) AND (iii).

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

16 (iii) A RESTAURANT OR OTHER RETAIL SALES BUSINESS, WHETHER
17 OR NOT THE RESTAURANT OR BUSINESS IS AN INDUSTRIAL PROCESSOR, IF
18 THE TANGIBLE PERSONAL PROPERTY IS A TEXTILE THAT HAS BEEN LAUN-
19 DERED OR CLEANED FOR REUSE, SALE, OR RENTAL UNDER A SERVICE OR
20 RENTAL AGREEMENT WITH A TERM OF AT LEAST 5 DAYS.

21 (h) That is a copyrighted motion picture film or a newspaper
22 or periodical admitted under federal postal laws and regulations
23 effective September 1, 1985 as second-class mail matter or as a
24 controlled circulation publication or qualified to accept legal
25 notices for publication in this state, as defined by law, or any
26 other newspaper or periodical of general circulation, established
27 not less than 2 years, and published not less than once a week.

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1 Tangible personal property used or consumed, and not becoming a
2 component part of a copyrighted motion picture film, newspaper,
3 or periodical, except that portion or percentage of tangible per-
4 sonal property used or consumed in producing an advertising sup-
5 plement that becomes a component part of a newspaper or periodi-
6 cal is subject to tax. For purposes of this subdivision, tangi-
7 ble personal property that becomes a component part of a newspa-
8 per or periodical and consequently not subject to tax includes an
9 advertising supplement inserted into and circulated with a news-
10 paper or periodical that is otherwise exempt from tax under this
11 subdivision, if the advertising supplement is delivered directly
12 to the newspaper or periodical by a person other than the adver-
13 tiser, or the advertising supplement is printed by the newspaper
14 or periodical.

15 (i) To persons licensed to operate commercial radio or tele-
16 vision stations if the property is used in the origination or
17 integration of the various sources of program material for com-
18 mercial radio or television transmission. This subdivision does
19 not include a vehicle licensed and titled for use on public high-
20 ways or property used in the transmission to or receiving from an
21 artificial satellite.

22 (j) That is a hearing aid, contact lenses if prescribed for
23 a specific disease that precludes the use of eyeglasses, or any
24 other apparatus, device, or equipment used to replace or substi-
25 tute for a part of the human body, or used to assist the disabled
26 person to lead a reasonably normal life if the tangible personal
27 property is purchased on a written prescription or order issued

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1 by a health professional as defined by section 21005 of the
2 public health code, ~~Act No. 368 of the Public Acts of 1978,~~
3 ~~being section 333.21005 of the Michigan Compiled Laws~~ 1978 PA
4 368, MCL 333.21005; a hearing aid battery; or eyeglasses pre-
5 scribed or dispensed to correct the person's vision by an oph-
6 thalmologist, optometrist, or optician.

7 (k) To persons for use or consumption in the rendition of
8 any combination of services, the use or consumption of which is
9 taxable under section 3a(a) or (c) of the use tax act, ~~Act~~
10 ~~No. 94 of the Public Acts of 1937, being section 205.93a of the~~
11 ~~Michigan Compiled Laws~~ 1937 PA 94, MCL 205.93A, except that this
12 exemption is limited to the tangible personal property located on
13 the premises of the subscriber and to central office equipment or
14 wireless equipment, directly used or consumed in transmitting,
15 receiving, or switching or the monitoring of switching of a 2-way
16 interactive communication. As used in this subdivision, central
17 office equipment or wireless equipment does not include distribu-
18 tion equipment including cable or wire facilities.

19 (l) That is a vehicle not for resale to a Michigan nonprofit
20 corporation organized exclusively to provide a community with
21 ambulance or fire department services.

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

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

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1 (o) Installed as a component part of a water pollution
2 control facility for which a tax exemption certificate is issued
3 pursuant to part 37 (water pollution control facilities; tax
4 exemption) of the natural resources and environmental protection
5 act, ~~Act No. 451 of the Public Acts of 1994, being sections~~
6 ~~324.3701 to 324.3708 of the Michigan Compiled Laws~~ 1994 PA 451,
7 MCL 324.3701 TO 324.3708, or an air pollution control facility
8 for which a tax exemption certificate is issued pursuant to part
9 59 (air pollution control facility; tax exemption) of the natural
10 resources and environmental protection act, ~~Act No. 451 of the~~
11 ~~Public Acts of 1994, being sections 324.5901 to 324.5908 of the~~
12 ~~Michigan Compiled Laws~~ 1994 PA 451, MCL 324.5901 TO 324.5908.

13 (p) To a purchaser of a new motor vehicle purchased before
14 January 1, 1993 if the purchaser qualifies for a special regis-
15 tration under section 226(12) of the Michigan vehicle code, ~~Act~~
16 ~~No. 300 of the Public Acts of 1949, being section 257.226 of the~~
17 ~~Michigan Compiled Laws~~ 1949 PA 300, MCL 257.226, and the vehicle
18 is purchased through a country determined by the department to be
19 providing a like or complete exemption for the purchase of a new
20 motor vehicle to be removed from that country.

21 Sec. 9. (1) The tax imposed by this act shall be adminis-
22 tered by the commissioner pursuant to ~~Act No. 122 of the Public~~
23 ~~Acts of 1941, as amended, being sections 205.1 to 205.31 of the~~
24 ~~Michigan Compiled Laws~~ 1941 PA 122, MCL 205.1 TO 205.31, and
25 this act. In case of conflict between the provisions of ~~Act~~
26 ~~No. 122 of the Public Acts of 1941, as amended,~~ 1941 PA 122, MCL

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1 205.1 TO 205.31, and this act, the provisions of this act shall
2 prevail.

3 (2) The department shall promulgate rules ~~under~~ TO
4 IMPLEMENT this act pursuant to the administrative procedures act
5 of 1969, ~~Act No. 306 of the Public Acts of 1969, as amended,~~
6 ~~being sections 24.201 to 24.328 of the Michigan Compiled Laws~~
7 1969 PA 306, MCL 24.201 TO 24.328.

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

13 (4) A CLAIM FOR A REFUND UNDER THE 1997 AMENDATORY ACT
14 AMENDING SECTION 4A TO INCLUDE A PERSON WHO LAUNDERS OR CLEANS
15 TEXTILES FOR REUSE, SALE, OR RENTAL UNDER A SERVICE AGREEMENT
16 WITH A TERM OF AT LEAST 5 DAYS WITHIN THE EXEMPTION FOR AN INDUS-
17 TRIAL PROCESSOR SHALL BE FILED NOT LATER THAN 90 DAYS AFTER THE
18 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.