

HOUSE BILL No. 5053

July 15, 1997, Introduced by Rep. Profit and referred to the Committee on Tax Policy.

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

10 (b) "Sale at retail" means a transaction by which the
11 ownership of tangible personal property is transferred for

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

1 ARTICLE VIII OF THE STATE CONSTITUTION OF 1963. A nonprofit
2 hospital or nonprofit housing includes only the property of a
3 nonprofit hospital or the homes or dwelling places constructed by
4 a nonprofit housing entity qualified as exempt pursuant to sec-
5 tion 15a of the state housing development authority act of 1966,
6 ~~Act No. 346 of the Public Acts of 1966, being section 125.1415a~~
7 ~~of the Michigan Compiled Laws~~ 1996 PA 346, MCL 125.1415A, the
8 income or property of which does not directly or indirectly inure
9 to the benefit of an individual, private stockholder, or other
10 private person. FOR TAXES LEVIED AFTER DECEMBER 31, 1991, AS
11 USED IN THIS SUBDIVISION, "HOSPITAL" MEANS A SEPARATELY ORGANIZED
12 ENTITY, OR A GROUP OF ENTITIES SUFFICIENTLY RELATED TO BE CONSID-
13 ERED A SINGLE EMPLOYER FOR PURPOSES OF SECTION 414 OF THE INTER-
14 NAL REVENUE CODE, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE MED-
15 ICAL, OBSTETRICAL, PSYCHIATRIC, OR SURGICAL CARE OR NURSING.
16 NURSING INCLUDES CARE PROVIDED BY SKILLED NURSES IN A LONG TERM
17 CARE FACILITY.

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

22 (e) "Sale at retail" includes the sale of electricity, natu-
23 ral or artificial gas, or steam if THE SALE IS made to the con-
24 sumer or user for consumption or use rather than for resale.
25 Sale at retail does not include the sale of water through water
26 mains or the sale of water delivered in bulk tanks in quantities
27 of not less than 500 gallons.

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

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

21 (h) "Sale at retail" does not include a commercial advertis-
22 ing element if the commercial advertising element is used to
23 create or develop a print, radio, television, or other advertise-
24 ment, the commercial advertising element is discarded or returned
25 to the provider after the advertising message is completed, and
26 the commercial advertising element is custom developed by the
27 provider for the purchaser. As used in this subdivision,

1 "commercial advertising element" means a negative or positive
2 photographic image, an audiotape or videotape master, a layout, a
3 manuscript, writing of copy, a design, artwork, an illustration,
4 retouching, and mechanical or keyline instructions. "Sale at
5 retail" includes black and white or full color process separation
6 elements, an audiotape reproduction, or a videotape
7 reproduction.

8 (i) "Gross proceeds" means the amount received in money,
9 credits, subsidies, property, or other money's worth in consider-
10 ation of a sale at retail within this state, without a deduction
11 for the cost of the property sold, the cost of material used, the
12 cost of labor or service purchased, an amount paid for interest
13 or a discount, a tax paid on cigarettes or tobacco products at
14 the time of purchase, a tax paid on beer or liquor at the time of
15 purchase or other expenses. Also, a deduction is not allowed for
16 losses. Gross proceeds does not include an amount received or
17 billed by the taxpayer for remittance to the employee as a gratu-
18 ity or tip, if the gratuity or tip is separately identified and
19 itemized on the guest check or billed to the customer. In a tax-
20 able sale at retail of a motor vehicle, if another motor vehicle
21 is used as part payment of the purchase price, the value of the
22 motor vehicle used as part payment of the purchase price shall be
23 that value agreed to by the parties to the sale as evidenced by
24 the signed statement executed pursuant to section 251 of the
25 Michigan vehicle code, ~~Act No. 300 of the Public Acts of 1949,~~
26 ~~being section 257.251 of the Michigan Compiled Laws~~ 1949 PA 300,
27 MCL 257.251. A credit or refund for returned goods or a refund

1 less an allowance for use made for a motor vehicle returned under
2 ~~Act No. 87 of the Public Acts of 1986, being sections 257.1401~~
3 ~~to 257.1410 of the Michigan Compiled Laws 1986 PA 87, MCL~~
4 257.1401 TO 257.1410, as certified by the manufacturer on a form
5 provided by the department of treasury, may be deducted.

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

9 (k) "Tax year" or "taxable year" means the fiscal year of
10 the state or the taxpayer's fiscal year if permission is obtained
11 by the taxpayer from the department to use the taxpayer's fiscal
12 year as the tax period instead.

13 (l) "Department" means the revenue division of the depart-
14 ment of treasury.

15 (m) "Taxpayer" means a person subject to a tax under this
16 act.

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

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

- 1 the department may so regard the unlicensed person and may regard
- 2 the dealer, distributor, supervisor, or employer as making sales
- 3 at retail at the retail price for the purposes of this act.