

HOUSE BILL No. 5562

February 10, 1998, 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 1997 PA 193.

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.

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 1937 PA 94, MCL 205.91 to 205.111, in the form of tangible per-
6 sonal property to a person licensed under this act, or for demon-
7 stration purposes or lending or leasing to a public or parochial
8 school offering a course in automobile driving. However, a vehi-
9 cle purchased by the school shall be certified for driver educa-
10 tion and shall not be reassigned for personal use of the school's
11 administrative personnel. For a dealer selling a new car or
12 truck, the exemption for demonstration purposes shall be deter-
13 mined by the number of new cars and trucks sold during the cur-
14 rent calendar year or the immediately preceding year without
15 regard to specific make or style in accordance with the following
16 schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20
17 units; 501 or more, 25 units; but not to exceed 25 cars and
18 trucks in a calendar year for demonstration purposes.

19 (c) "Sale at retail" includes the sale of tangible personal
20 property to persons directly engaged in the business of con-
21 structing, altering, repairing, or improving real estate for
22 others except property affixed to and made a structural part of
23 the real estate of a COMMUNITY COLLEGE, nonprofit hospital, or
24 nonprofit housing. A nonprofit hospital or nonprofit housing
25 includes only the property of a nonprofit hospital or the homes
26 or dwelling places constructed by a nonprofit housing entity
27 qualified as exempt pursuant to section 15a of the state housing

1 development authority act of 1966, 1966 PA 346, MCL 125.1415a,
2 the income or property of which does not directly or indirectly
3 inure to the benefit of an individual, private stockholder, or
4 other private person.

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

9 (e) "Sale at retail" includes the sale of electricity, natu-
10 ral or artificial gas, or steam if the sale is made to the con-
11 sumer or user for consumption or use rather than for resale.
12 Sale at retail also includes the sale of a prepaid telephone
13 calling card or a prepaid authorization number for telephone use,
14 rather than for resale. Sale at retail also includes the reau-
15 thorization of a prepaid telephone calling card or a prepaid
16 authorization number. Sale at retail does not include the sale
17 of water through water mains or the sale of water delivered in
18 bulk tanks in quantities of not less than 500 gallons.

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

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

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

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

26 (i) "Gross proceeds" means the amount received in money,
27 credits, subsidies, property, or other money's worth in

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

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

25 (k) "Tax year" or "taxable year" means the fiscal year of
26 the state or the taxpayer's fiscal year if permission is obtained

1 by the taxpayer from the department to use the taxpayer's fiscal
2 year as the tax period instead.

3 (l) "Department" means the revenue division of the depart-
4 ment of treasury.

5 (m) "Taxpayer" means a person subject to a tax under this
6 act.

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

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