

Act No. 60  
Public Acts of 1998  
Approved by the Governor  
April 17, 1998  
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April 20, 1998  
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STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1998

**Introduced by Senators Bullard, Shugars, Bouchard, DeGrow and Stallings**

# **ENROLLED SENATE BILL No. 717**

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending section 4g (MCL 205.54g), as amended by 1996 PA 576.

*The People of the State of Michigan enact:*

Sec. 4g. (1) A person subject to tax under this act may exclude from the amount of the gross proceeds used for the computation of the tax 1 or more of the following:

(a) Sales of prescription drugs for human use or food for human consumption, except prepared food intended for immediate consumption.

(b) The deposit on a returnable container for a beverage or the deposit on a carton or case that is used for returnable containers.

(c) Food or tangible personal property purchased with federal food stamps.

(d) Fruit or vegetable seeds and fruit or vegetable plants if purchased at a place of business authorized to accept food stamps by the food and nutrition service of the United States department of agriculture or a place of business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of denial to the department of treasury.

(e) The product of the out-of-state usage percentage and the gross proceeds otherwise taxable under this act from the sale of a qualified truck or a trailer designed to be drawn behind a qualified truck, purchased after December 31, 1996 and before May 1, 1999 by an interstate motor carrier and used in interstate commerce. As used in this subdivision:

(i) "Interstate motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.

(ii) "Out-of-state usage percentage" is a fraction, the numerator of which is the number of miles driven outside of this state in the immediately preceding tax year by qualified trucks used by the interstate motor carrier and the denominator of which is the total miles driven in the immediately preceding tax year by qualified trucks used by the interstate motor carrier. Miles driven by qualified trucks used solely in intrastate commerce shall not be included in calculating the out-of-state usage percentage.

(iii) "Qualified truck" means a commercial motor vehicle power unit that has 2 axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has 3 or more axles.

(2) "Prescription drugs for human use" means insulin or a drug dispensed by a licensed pharmacist pursuant to a written prescription prescribed by a licensed physician or other health professional as defined by section 21005 of the public health code, 1978 PA 368, MCL 333.21005, for the use of a designated person, or oxygen dispensed pursuant to a written prescription or order issued by a licensed physician or other health professional as defined in section 21005 of the public health code, 1978 PA 368, MCL 333.21005.

(3) "Food for human consumption" means all food and drink items, including bottled water, intended primarily for human consumption except beverages with an alcohol content of 1/2 of 1% or more by volume, tobacco and tobacco products, and prepared food intended for immediate consumption. Food for human consumption includes live animals purchased with the intent to be slaughtered for human consumption.

(4) "Prepared food intended for immediate consumption" means a retail sale of 1 or more of the following:

(a) Food or drink prepared and served for immediate consumption at or near the premises or ordinarily sold on a takeout basis for immediate consumption either on or off the premises. For the purposes of this section premises includes the total space and facilities in or on which a retailer conducts his or her business, including, but not limited to, parking areas for the convenience of in-car consumption, outdoor tables, benches, chairs, and similar conveniences.

(b) Food or drink furnished, prepared, or served for immediate consumption at a table, chair, or counter or from a tray, glass, dish, container, or other tableware.

(c) Food or drink arranged on a plate or platter, whether intended for individual or multiple servings and whether sold by the pound or by the serving; a sandwich, either hot or cold; or a combination of taxable and nontaxable items when sold as a plate or packaged as a meal, even though intended for more than 1 serving.

(d) Food that is cooked to the order of the purchaser, or that is cooked and maintained at a temperature higher than the surrounding air temperature before sale, or prepared food that is sold by the piece rather than by weight or measure.

(e) After December 31, 1994, carbonated beverages sold from a mobile facility or vending machine, or food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees fahrenheit or below 65 degrees fahrenheit before sale and sold from a mobile facility or vending machine, except milk, noncarbonated beverages containing 10% or more juice content, and fresh fruit. A refund shall not be made for any taxes paid after December 31, 1994 and before January 16, 1997 for food or drink otherwise exempt under this subdivision. The tax due under this act on the sale of food or drink from a vending machine selling both taxable items and items exempt under this subsection shall be calculated under this act after December 31, 1994 based on 1 of the following as determined by the taxpayer:

(i) Actual gross proceeds from sales at retail.

(ii) The sum of proceeds from carbonated beverages and 45% of proceeds from the sale of items subject to tax under this act or exempt from the tax levied under this act, other than from the sale of carbonated beverages.

(5) Prepared food intended for immediate consumption does not include bakery products for off-premises consumption, such as doughnuts, pastry, bread, and cakes or meals eligible to be purchased with federal food stamps.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate.

*Henry R. Schultz*

Clerk of the House of Representatives.

Approved \_\_\_\_\_

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Governor.