

# HOUSE BILL No. 4120

February 2, 1999, Introduced by Reps. Woronchak, Vander Roest, Birkholz, Gosselin, Garcia, Mortimer, Bradstreet, Vear, Cassis and Raczkowski and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending sections 1, 7, and 7a (MCL 205.51, 205.57, and 205.57a), section 1 as amended by 1998 PA 451 and sections 7 and 7a as added by 1984 PA 32.

## **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.

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

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. For taxes assessed after December 31, 1990 and before  
7 January 1, 1996, as used in this subdivision, "hospital"  
8 includes, but is not limited to, an entity that meets all of the  
9 following qualifications:

10 (i) Is a separately organized entity, or a group of entities  
11 sufficiently related to be considered a single employer for pur-  
12 poses of section 414 of the internal revenue code of 1986, the  
13 primary purpose of which is to provide medical, obstetrical, psy-  
14 chiatric, or surgical care or nursing. Nursing includes care  
15 provided by skilled nurses in a long-term care facility.

16 (ii) ~~Prior to~~ BEFORE January 1, 1996, initiated an appeal  
17 of taxes assessed under this act on tangible personal property  
18 used to construct a facility after December 31, 1990 and before  
19 January 1, 1996, the primary purpose of which is to provide medi-  
20 cal, obstetrical, psychiatric, or surgical care or nursing.  
21 Nursing includes a long-term care facility.

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

26 (e) "Sale at retail" includes the sale of electricity,  
27 natural or artificial gas, or steam if the sale is made to the

1 consumer or user for consumption or use rather than for resale.  
2 Sale at retail also includes the sale of a prepaid telephone  
3 calling card or a prepaid authorization number for telephone use,  
4 rather than for resale. Sale at retail also includes the reau-  
5 thorization of a prepaid telephone calling card or a prepaid  
6 authorization number. Sale at retail does not include the sale  
7 of water through water mains or the sale of water delivered in  
8 bulk tanks in quantities of not less than 500 gallons.

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

25 (g) "Sale at retail" includes the sale of tangible personal  
26 property by an industrial laundry under a sale, rental, or  
27 service agreement with a term of at least 5 days.

1 (h) "Sale at retail" does not include an isolated  
2 transaction by a person not licensed or required to be licensed  
3 under this act, in which tangible personal property is offered  
4 for sale, sold, transferred, and delivered by the owner.

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

19 (j) "Gross proceeds" means the amount received in money,  
20 credits, subsidies, property, or other money's worth in consider-  
21 ation of a sale at retail within this state, without a deduction  
22 for the cost of the property sold, the cost of material used, the  
23 cost of labor or service purchased, an amount paid for interest  
24 or a discount, a tax paid on cigarettes or tobacco products at  
25 the time of purchase, a tax paid on beer or liquor at the time of  
26 purchase or other expenses. Also, a deduction is not allowed for  
27 losses. Gross proceeds do not include an amount received or

1 billed by the taxpayer for remittance to the employee as a  
2 gratuity or tip, if the gratuity or tip is separately identified  
3 and itemized on the guest check or billed to the customer. In a  
4 taxable sale at retail of a motor vehicle, if another motor vehi-  
5 cle is used as part payment of the purchase price, the value of  
6 the motor vehicle used as part payment of the purchase price  
7 shall be that value agreed to by the parties to the sale as evi-  
8 denced by the signed statement executed pursuant to section 251  
9 of the Michigan vehicle code, 1949 PA 300, MCL 257.251. IF A  
10 MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY  
11 OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATERCRAFT IS USED  
12 AS PART PAYMENT IN A TAXABLE SALE AT RETAIL OF ANOTHER MOTOR  
13 VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR  
14 EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATERCRAFT, RESPEC-  
15 TIVELY, THE GROSS PROCEEDS IS THE DIFFERENCE BETWEEN THE  
16 AGREED-UPON VALUE OF THE MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED  
17 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR  
18 TITLED WATERCRAFT USED AS PART PAYMENT OF THE PURCHASE PRICE AND  
19 THE FULL RETAIL PRICE OF THE MOTOR VEHICLE, AIRCRAFT,  
20 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
21 TIONAL VEHICLE, OR TITLED WATERCRAFT BEING PURCHASED. A credit or  
22 refund for returned goods or a refund less an allowance for use  
23 made for a motor vehicle returned under 1986 PA 87, MCL 257.1401  
24 to 257.1410, as certified by the manufacturer on a form provided  
25 by the department of treasury, may be deducted.

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

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

12 (o) "Tax" includes a tax, interest, or penalty levied under  
13 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  
20 other goods used in the rental, sale, or cleaning of textiles.

21 (Q) "RECREATIONAL VEHICLE" INCLUDES A TRAILER COACH, CONVEN-  
22 TIONAL TRAVEL TRAILER, PARK TRAILER, FIFTH-WHEEL TRAVEL TRAILER,  
23 FOLDING CAMPING TRAILER, TRUCK CAMPER, MOTOR HOME, VAN CAMPER,  
24 VAN CONVERSION, OR MULTIUSE VEHICLE.

25 (2) If the department determines that it is necessary for  
26 the efficient administration of this act to regard an unlicensed  
27 person, including a salesperson, representative, peddler, or

1 canvasser, as the agent of the dealer, distributor, supervisor,  
2 or employer under whom the unlicensed person operates or from  
3 whom the unlicensed person obtains the tangible personal property  
4 sold by the unlicensed person, irrespective of whether the unli-  
5 censed person is making sales on the unlicensed person's own  
6 behalf or on behalf of the dealer, distributor, supervisor, or  
7 employer, the department may so regard the unlicensed person and  
8 may regard the dealer, distributor, supervisor, or employer as  
9 making sales at retail at the retail price for the purposes of  
10 this act.

11       Sec. 7. (1) Upon THE purchase of a motor vehicle, AIRCRAFT,  
12 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
13 TIONAL VEHICLE, OR TITLED WATERCRAFT by a new ~~vehicle~~ dealer or  
14 a used or secondhand ~~vehicle~~ dealer ~~made on or after March 1,~~  
15 ~~1984 and on or before February 1, 1985~~ that is not part of a  
16 transaction in which the dealer also sells a motor vehicle, AIR-  
17 CRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, REC-  
18 REATIONAL VEHICLE, OR TITLED WATERCRAFT and provides the state-  
19 ment specifying the amount credited the buyer for a trade-in as  
20 required by section 251 of ~~Act No. 300 of the Public Acts of~~  
21 ~~1949, being section 257.251 of the Michigan Compiled Laws~~ THE  
22 MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.251, the dealer shall  
23 provide the owner of the motor vehicle, AIRCRAFT, SELF-PROPELLED  
24 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR  
25 TITLED WATERCRAFT who is selling the motor vehicle, AIRCRAFT,  
26 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT,  
27 RECREATIONAL VEHICLE, OR TITLED WATERCRAFT to the dealer with a

1 certificate, signed by each party, specifying all of the  
2 following information:

3 (a) The year, make, model, and ~~vehicle~~ identification  
4 number of the motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF  
5 HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED  
6 WATERCRAFT.

7 (b) The name and address of each party.

8 (c) The dealer's license number.

9 (d) The price paid for the motor vehicle, AIRCRAFT,  
10 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
11 TIONAL VEHICLE, OR TITLED WATERCRAFT.

12 (e) The date ~~the dealer purchased the motor vehicle~~ OF  
13 PURCHASE.

14 (f) A statement indicating that the seller may present the  
15 certificate when purchasing ~~a new~~ ANOTHER motor vehicle, AIR-  
16 CRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, REC-  
17 REATIONAL VEHICLE, OR TITLED WATERCRAFT within 90 days after the  
18 date specified on the certificate from a person licensed under  
19 this act to reduce the gross proceeds upon which the taxpayer is  
20 taxed and may reimburse himself or herself.

21 (2) A person receiving a certificate prescribed by this sec-  
22 tion upon the sale of ~~their~~ HIS OR HER motor vehicle, AIRCRAFT,  
23 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
24 TIONAL VEHICLE, OR TITLED WATERCRAFT to a new ~~vehicle~~ dealer or  
25 a used or secondhand ~~vehicle~~ dealer may present the certificate  
26 to a person subject to tax under this act upon purchasing ~~a new~~  
27 ANOTHER motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY

1 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED  
2 WATERCRAFT within 90 days after the date on the certificate as  
3 the date the person sold ~~their~~ HIS OR HER MOTOR vehicle, AIR-  
4 CRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, REC-  
5 REATIONAL VEHICLE, OR TITLED WATERCRAFT to a dealer. A certifi-  
6 cate presented at a sale at retail shall reduce, pursuant to sec-  
7 tion 1, the gross proceeds of the sale at retail for which the  
8 certificate was presented and shall reduce the basis on which the  
9 taxpayer may reimburse himself or herself by adding any tax  
10 levied by this act on the sale at retail to the sale price.  
11 Except as provided by this section, a certificate issued pursuant  
12 to this section ~~shall~~ IS not ~~be~~ transferable.

13 (3) A person subject to tax under this act who, upon making  
14 a sale at retail of a ~~new~~ motor vehicle, AIRCRAFT,  
15 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
16 TIONAL VEHICLE, OR TITLED WATERCRAFT, receives from the purchaser  
17 a completed certificate that evidences a sale of a motor vehicle,  
18 AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT,  
19 RECREATIONAL VEHICLE, OR TITLED WATERCRAFT by the purchaser to a  
20 new ~~vehicle~~ dealer or a used or secondhand dealer within 90  
21 days before the sale at retail shall note the date of the sale at  
22 retail for which the certificate was presented upon the certifi-  
23 cate and forward the certificate with any tax liability of the  
24 taxpayer on the sale at retail for which the certificate was  
25 presented.

26 (4) The department shall prescribe and distribute  
27 certificates to be used for purposes of this section.

1 (5) For purposes of section 27 of ~~Act No. 122 of the Public~~  
2 ~~Acts of 1941, being section 205.27 of the Michigan Compiled Laws~~  
3 1941 PA 122, MCL 205.27, and the penalties provided by that sec-  
4 tion, a certificate under this section ~~shall be~~ IS considered a  
5 return.

6 Sec. 7a. (1) Upon the purchase from a private individual of  
7 a used or secondhand motor vehicle, AIRCRAFT, SELF-PROPELLED  
8 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR  
9 TITLED WATERCRAFT by an individual who is not a new ~~vehicle~~  
10 dealer, or a used or secondhand ~~vehicle~~ dealer ~~, made on or~~  
11 ~~after March 1, 1984 and on or before February 1, 1985,~~ and upon  
12 the request of the seller, both parties to the transaction shall  
13 sign a certificate to be provided by the seller specifying all of  
14 the following:

15 (a) The year, make, model, and ~~vehicle~~ identification  
16 number of the motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF  
17 HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED  
18 WATERCRAFT.

19 (b) The name and address of each party.

20 (c) The price paid for the motor vehicle, AIRCRAFT,  
21 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
22 TIONAL VEHICLE, OR TITLED WATERCRAFT.

23 (d) The date ~~the individual purchased the motor vehicle~~ OF  
24 PURCHASE.

25 (e) A statement indicating that when purchasing ~~a new~~  
26 ANOTHER motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY  
27 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED

1 WATERCRAFT within 90 days after the date specified on the  
2 certificate from a person licensed and subject to tax under this  
3 act, the seller of the used MOTOR vehicle, AIRCRAFT,  
4 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
5 TIONAL VEHICLE, OR TITLED WATERCRAFT may present the certificate  
6 to the taxpayer to reduce the gross proceeds upon which the tax-  
7 payer is taxed and to reduce the amount by which the taxpayer is  
8 reimbursed.

9 (2) A person receiving a certificate pursuant to subsection  
10 (1) upon the sale of ~~their~~ HIS OR HER motor vehicle, AIRCRAFT,  
11 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
12 TIONAL VEHICLE, OR TITLED WATERCRAFT to another individual may  
13 present the certificate to a person subject to tax under this act  
14 upon purchasing ~~a new~~ ANOTHER motor vehicle, AIRCRAFT,  
15 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
16 TIONAL VEHICLE, OR TITLED WATERCRAFT within 90 days after the  
17 date of sale of the used MOTOR vehicle, AIRCRAFT, SELF-PROPELLED  
18 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR  
19 TITLED WATERCRAFT specified on the certificate. A certificate  
20 presented at a sale at retail shall reduce, pursuant to  
21 section 1, the gross proceeds of the sale at retail for which the  
22 certificate was presented and shall reduce the basis on which the  
23 taxpayer may reimburse himself or herself by adding any tax  
24 levied by this act on the sale at retail to the sale price.  
25 Except as provided by this section, a certificate issued pursuant  
26 to this section ~~shall~~ IS not ~~be~~ transferable.

1 (3) If a person subject to tax under this act makes a sale  
2 at retail and receives from the purchaser a certificate  
3 evidencing a prior sale of a used MOTOR vehicle, AIRCRAFT,  
4 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-  
5 TIONAL VEHICLE, OR TITLED WATERCRAFT, the taxpayer shall note the  
6 date of the prior sale on the certificate. If the sale of the  
7 used MOTOR vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY  
8 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED  
9 WATERCRAFT occurred within 90 days before the sale at retail, the  
10 taxpayer shall forward the certificate with any tax liability of  
11 the taxpayer on the sale at retail for which the certificate was  
12 presented to the department.

13 (4) The department shall prescribe and distribute certifi-  
14 cates to be used for purposes of this section. Certificates  
15 shall be available at all offices of the secretary of state.

16 (5) For purposes of section 27 of ~~Act No. 122 of the Public~~  
17 ~~Acts of 1941, being section 205.27 of the Michigan Compiled Laws~~  
18 1941 PA 122, MCL 205.27, and the penalties provided by that sec-  
19 tion, a certificate under this section ~~shall be~~ IS considered a  
20 return.