

HOUSE BILL No. 4236

February 9, 1999, Introduced by Reps. Spade, DeHart and Bogardus 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 1998 PA 451.

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 nonprofit hospital or nonprofit housing. A
24 nonprofit hospital or nonprofit housing includes only the prop-
25 erty of a nonprofit hospital or the homes or dwelling places con-
26 structed by a nonprofit housing entity qualified as exempt
27 pursuant to section 15a of the state housing development

1 authority act of 1966, 1966 PA 346, MCL 125.1415a, the income or
2 property of which does not directly or indirectly inure to the
3 benefit of an individual, private stockholder, or other private
4 person. For taxes assessed after December 31, 1990 and before
5 January 1, 1996, as used in this subdivision, "hospital"
6 includes, but is not limited to, an entity that meets all of the
7 following qualifications:

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

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

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

24 (e) "Sale at retail" includes the sale of electricity, natu-
25 ral or artificial gas, or steam if the sale is made to the con-
26 sumer or user for consumption or use rather than for resale.
27 Sale at retail also includes the sale of a prepaid telephone

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

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

23 (g) "Sale at retail" includes the sale of tangible personal
24 property by an industrial laundry under a sale, rental, or serv-
25 ice agreement with a term of at least 5 days.

26 (h) "Sale at retail" does not include an isolated
27 transaction by a person not licensed or required to be licensed

1 under this act, in which tangible personal property is offered
2 for sale, sold, transferred, and delivered by the owner.

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

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

1 and itemized on the guest check or billed to the customer. In a
2 taxable sale at retail of a motor vehicle, if another motor vehi-
3 cle is used as part payment of the purchase price, the value of
4 the motor vehicle used as part payment of the purchase price
5 shall be that value agreed to by the parties to the sale as evi-
6 denced by the signed statement executed pursuant to section 251
7 of the Michigan vehicle code, 1949 PA 300, MCL 257.251. IF A
8 MOTOR VEHICLE IS USED AS PART PAYMENT IN A TAXABLE SALE AT RETAIL
9 OF ANOTHER MOTOR VEHICLE, THE GROSS PROCEEDS IS THE DIFFERENCE
10 BETWEEN THE AGREED-UPON VALUE OF THE MOTOR VEHICLE USED AS PART
11 PAYMENT OF THE PURCHASE PRICE AND THE FULL RETAIL PRICE OF THE
12 MOTOR VEHICLE BEING PURCHASED. A credit or refund for returned
13 goods or a refund less an allowance for use made for a motor
14 vehicle returned under 1986 PA 87, MCL 257.1401 to 257.1410, as
15 certified by the manufacturer on a form provided by the depart-
16 ment of treasury, may be deducted.

17 (k) "Business" includes an activity engaged in by a person
18 or caused to be engaged in by that person with the object of
19 gain, benefit, or advantage, either direct or indirect.

20 (l) "Tax year" or "taxable year" means the fiscal year of
21 the state or the taxpayer's fiscal year if permission is obtained
22 by the taxpayer from the department to use the taxpayer's fiscal
23 year as the tax period instead.

24 (m) "Department" means the revenue division of the depart-
25 ment of treasury.

26 (n) "Taxpayer" means a person subject to a tax under this
27 act.

1 (o) "Tax" includes a tax, interest, or penalty levied under
2 this act.

3 (p) "Textiles" means goods that are made of or incorporate
4 woven or nonwoven fabric, including, but not limited to, cloth-
5 ing, shoes, hats, gloves, handkerchiefs, curtains, towels,
6 sheets, pillows, pillow cases, tablecloths, napkins, aprons,
7 linens, floor mops, floor mats, and thread. Textiles also
8 include materials used to repair or construct textiles — or
9 other goods used in the rental, sale, or cleaning of textiles.

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