

**SENATE BILL NO. 544**

April 27, 1999, Introduced by Senators ROGERS and EMMONS and referred to the Committee on Finance.

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending section 4g (MCL 205.54g), as amended by 1998 PA 60, and by adding section 4r.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

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

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

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

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

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

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

21 ~~(ii) "Out-of-state usage percentage" is a fraction, the~~  
22 ~~numerator of which is the number of miles driven outside of this~~  
23 ~~state in the immediately preceding tax year by qualified trucks~~  
24 ~~used by the interstate motor carrier and the denominator of which~~  
25 ~~is the total miles driven in the immediately preceding tax year~~  
26 ~~by qualified trucks used by the interstate motor carrier. Miles~~  
27 ~~driven by qualified trucks used solely in intrastate commerce~~

~~1 shall not be included in calculating the out-of-state usage  
2 percentage.~~

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

7 (2) "Prescription drugs for human use" means insulin or a  
8 drug dispensed by a licensed pharmacist pursuant to a written  
9 prescription prescribed by a licensed physician or other health  
10 professional as defined by section 21005 of the public health  
11 code, 1978 PA 368, MCL 333.21005, for the use of a designated  
12 person, or oxygen dispensed pursuant to a written prescription or  
13 order issued by a licensed physician or other health professional  
14 as defined in section 21005 of the public health code, 1978 PA  
15 368, MCL 333.21005.

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

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

25 (a) Food or drink prepared and served for immediate consump-  
26 tion at or near the premises or ordinarily sold on a takeout  
27 basis for immediate consumption either on or off the premises.

1 For the purposes of this section premises includes the total  
2 space and facilities in or on which a retailer conducts his or  
3 her business, including, but not limited to, parking areas for  
4 the convenience of in-car consumption, outdoor tables, benches,  
5 chairs, and similar conveniences.

6 (b) Food or drink furnished, prepared, or served for immedi-  
7 ate consumption at a table, chair, or counter or from a tray,  
8 glass, dish, container, or other tableware.

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

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

19 (e) ~~After December 31, 1994, carbonated~~ CARBONATED bever-  
20 ages sold from a mobile facility or vending machine, or food or  
21 drink heated or cooled mechanically, electrically, or by other  
22 artificial means to an average temperature above 75 degrees fahr-  
23 enheit or below 65 degrees fahrenheit before sale and sold from a  
24 mobile facility or vending machine, except milk, noncarbonated  
25 beverages containing 10% or more juice content, and fresh fruit.  
26 ~~A refund shall not be made for any taxes paid after December 31,~~  
27 ~~1994 and before January 16, 1997 for food or drink otherwise~~

1 ~~exempt under this subdivision.~~ The tax due under this act on the  
 2 sale of food or drink from a vending machine selling both taxable  
 3 items and items exempt under this subsection shall be calculated  
 4 under this act ~~after December 31, 1994~~ based on 1 of the fol-  
 5 lowing as determined by the taxpayer:

6 (i) Actual gross proceeds from sales at retail.

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

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

15 SEC. 4R. (1) A PERSON SUBJECT TO TAX UNDER THIS ACT MAY  
 16 EXCLUDE FROM THE AMOUNT OF THE GROSS PROCEEDS USED FOR THE COMPU-  
 17 TATION OF THE TAX 1 OR MORE OF THE FOLLOWING:

18 (A) THE PRODUCT OF THE OUT-OF-STATE USAGE PERCENTAGE AND THE  
 19 GROSS PROCEEDS OTHERWISE TAXABLE UNDER THIS ACT FROM THE SALE OF  
 20 A QUALIFIED TRUCK OR A TRAILER DESIGNED TO BE DRAWN BEHIND A  
 21 QUALIFIED TRUCK, PURCHASED AFTER DECEMBER 31, 1996 AND BEFORE  
 22 MAY 1, 1999 BY AN INTERSTATE MOTOR CARRIER AND USED IN INTERSTATE  
 23 COMMERCE.

24 (B) A SALE OF ROLLING STOCK PURCHASED BY AN INTERSTATE MOTOR  
 25 CARRIER AND USED IN INTERSTATE COMMERCE.

26 (2) AS USED IN THIS SECTION:

1 (A) "INTERSTATE MOTOR CARRIER" MEANS A PERSON ENGAGED IN THE  
2 BUSINESS OF CARRYING PERSONS OR PROPERTY, OTHER THAN THEMSELVES,  
3 THEIR EMPLOYEES, OR THEIR OWN PROPERTY, FOR HIRE ACROSS STATE  
4 LINES, WHOSE FLEET MILEAGE WAS DRIVEN AT LEAST 10% OUTSIDE OF  
5 THIS STATE IN THE IMMEDIATELY PRECEDING TAX YEAR.

6 (B) "OUT-OF-STATE USAGE PERCENTAGE" IS A FRACTION, THE  
7 NUMERATOR OF WHICH IS THE NUMBER OF MILES DRIVEN OUTSIDE OF THIS  
8 STATE IN THE IMMEDIATELY PRECEDING TAX YEAR BY QUALIFIED TRUCKS  
9 USED BY THE INTERSTATE MOTOR CARRIER AND THE DENOMINATOR OF WHICH  
10 IS THE TOTAL MILES DRIVEN IN THE IMMEDIATELY PRECEDING TAX YEAR  
11 BY QUALIFIED TRUCKS USED BY THE INTERSTATE MOTOR CARRIER. MILES  
12 DRIVEN BY QUALIFIED TRUCKS USED SOLELY IN INTRASTATE COMMERCE  
13 SHALL NOT BE INCLUDED IN CALCULATING THE OUT-OF-STATE USAGE  
14 PERCENTAGE.

15 (C) "QUALIFIED TRUCK" MEANS A COMMERCIAL MOTOR VEHICLE POWER  
16 UNIT THAT HAS 2 AXLES AND A GROSS VEHICLE WEIGHT RATING IN EXCESS  
17 OF 10,000 POUNDS OR A COMMERCIAL MOTOR VEHICLE POWER UNIT THAT  
18 HAS 3 OR MORE AXLES.

19 (D) "ROLLING STOCK" MEANS A QUALIFIED TRUCK, A TRAILER  
20 DESIGNED TO BE DRAWN BEHIND A QUALIFIED TRUCK, AND PARTS AFFIXED  
21 TO EITHER A QUALIFIED TRUCK OR A TRAILER DESIGNED TO BE DRAWN  
22 BEHIND A QUALIFIED TRUCK.

23 Enacting section 1. This amendatory act is effective for  
24 taxes levied after April 30, 1999.