

HOUSE BILL No. 4279

February 15, 2001, Introduced by Reps. Woronchak, Richardville, Gilbert, Spade, Birkholz, Allen, Zelenko, Kolb, Bishop, Mead, Stewart, Richner, Neumann 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 2000 PA 390 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.

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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 a conditional sale, install-
22 ment lease sale, or other transfer of property if title is
23 retained as security for the purchase price but is intended to be
24 transferred later.

25 (d) "Sale at retail" includes the sale of electricity, natu-
26 ral or artificial gas, or steam, if the sale is made to the
27 consumer or user for consumption or use rather than for resale.

1 Beginning September 20, 1999, sale at retail also includes the
2 sale of the transmission and distribution of electricity, whether
3 the electricity is purchased from the delivering utility or from
4 another provider, if the sale is made to the consumer or user of
5 the electricity for consumption or use rather than for resale.
6 Sale at retail also includes the sale of a prepaid telephone
7 calling card or a prepaid authorization number for telephone use,
8 rather than for resale, and also includes the reauthorization of
9 a prepaid telephone calling card or a prepaid authorization
10 number. Sale at retail does not include the sale of water
11 through water mains or the sale of water delivered in bulk tanks
12 in quantities of not less than 500 gallons.

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

1 processing capabilities to indicate, perform, or achieve a
2 particular function, task, or result.

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

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

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

24 (i) "Gross proceeds" means the amount received in money,
25 credits, subsidies, property, or other money's worth in consider-
26 ation of a sale at retail within this state, without a deduction
27 for the cost of the property sold, the cost of material used, the

1 cost of labor or service purchased, an amount paid for interest
2 or a discount, a tax paid on cigarettes or tobacco products at
3 the time of purchase, a tax paid on beer or liquor at the time of
4 purchase or other expenses. Also, a deduction is not allowed for
5 losses. Gross proceeds do not include an amount received or
6 billed by the taxpayer for remittance to the employee as a gratu-
7 ity or tip, if the gratuity or tip is separately identified and
8 itemized on the guest check or billed to the customer. In a tax-
9 able sale at retail of a motor vehicle, if another motor vehicle
10 is used as part payment of the purchase price, the value of the
11 motor vehicle used as part payment of the purchase price shall be
12 that value agreed to by the parties to the sale as evidenced by
13 the signed statement executed pursuant to section 251 of the
14 Michigan vehicle code, 1949 PA 300, MCL 257.251. IF A MOTOR
15 VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR
16 EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED WATERCRAFT IS USED AS
17 PART PAYMENT IN A TAXABLE SALE AT RETAIL OF ANOTHER MOTOR VEHI-
18 CLE, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIP-
19 MENT, RECREATIONAL VEHICLE, OR TITLED WATERCRAFT, RESPECTIVELY,
20 THE GROSS PROCEEDS IS THE DIFFERENCE BETWEEN THE AGREED-UPON
21 VALUE OF THE MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED PIECE OF
22 HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
23 WATERCRAFT USED AS PART PAYMENT OF THE PURCHASE PRICE AND THE
24 FULL RETAIL PRICE OF THE MOTOR VEHICLE, AIRCRAFT, SELF-PROPELLED
25 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR
26 TITLED WATERCRAFT BEING PURCHASED. A credit or refund for
27 returned goods or a refund less an allowance for use made for a

1 motor vehicle returned under 1986 PA 87, MCL 257.1401 to
2 257.1410, as certified by the manufacturer on a form provided by
3 the department of treasury, may be deducted.

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

7 (k) "Tax year" or "taxable year" means the fiscal year of
8 the state or the taxpayer's fiscal year if permission is obtained
9 by the taxpayer from the department to use the taxpayer's fiscal
10 year as the tax period instead.

11 (l) "Department" means the revenue division of the depart-
12 ment of treasury.

13 (m) "Taxpayer" means a person subject to a tax under this
14 act.

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

17 (o) "Textiles" means goods that are made of or incorporate
18 woven or nonwoven fabric, including, but not limited to, cloth-
19 ing, shoes, hats, gloves, handkerchiefs, curtains, towels,
20 sheets, pillows, pillow cases, tablecloths, napkins, aprons,
21 linens, floor mops, floor mats, and thread. Textiles also
22 include materials used to repair or construct textiles, or other
23 goods used in the rental, sale, or cleaning of textiles.

24 (P) "RECREATIONAL VEHICLE" INCLUDES A TRAILER COACH, CONVEN-
25 TIONAL TRAVEL TRAILER, PARK TRAILER, FIFTH-WHEEL TRAVEL TRAILER,
26 FOLDING CAMPING TRAILER, TRUCK CAMPER, MOTOR HOME, VAN CAMPER,
27 VAN CONVERSION, OR MULTIUSE VEHICLE.

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

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

1 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT,
2 RECREATIONAL VEHICLE, OR TITLED WATERCRAFT to the dealer with a
3 certificate, signed by each party, specifying all of the follow-
4 ing information:

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

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

10 (c) The dealer's license number.

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

14 (e) The date ~~the dealer purchased the motor vehicle~~ OF
15 PURCHASE.

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

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

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

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

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

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

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

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

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

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

25 (d) The date ~~the individual purchased the motor vehicle~~ OF
26 PURCHASE.

1 (e) A statement indicating that when purchasing ~~a new~~
2 ANOTHER motor vehicle, AIRCRAFT, SELF-PROPELLED PIECE OF HEAVY
3 MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR TITLED
4 WATERCRAFT within 90 days after the date specified on the certif-
5 icate from a person licensed and subject to tax under this act,
6 the seller of the used MOTOR vehicle, AIRCRAFT, SELF-PROPELLED
7 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR
8 TITLED WATERCRAFT may present the certificate to the taxpayer to
9 reduce the gross proceeds upon which the taxpayer is taxed and to
10 reduce the amount by which the taxpayer is reimbursed.

11 (2) A person receiving a certificate pursuant to subsection
12 (1) upon the sale of ~~their~~ HIS OR HER motor vehicle, AIRCRAFT,
13 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
14 TIONAL VEHICLE, OR TITLED WATERCRAFT to another individual may
15 present the certificate to a person subject to tax under this act
16 upon purchasing ~~a new~~ ANOTHER motor vehicle, AIRCRAFT,
17 SELF-PROPELLED PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREA-
18 TIONAL VEHICLE, OR TITLED WATERCRAFT within 90 days after the
19 date of sale of the used MOTOR vehicle, AIRCRAFT, SELF-PROPELLED
20 PIECE OF HEAVY MACHINERY OR EQUIPMENT, RECREATIONAL VEHICLE, OR
21 TITLED WATERCRAFT specified on the certificate. A certificate
22 presented at a sale at retail shall reduce, pursuant to
23 section 1, the gross proceeds of the sale at retail for which the
24 certificate was presented and shall reduce the basis on which the
25 taxpayer may reimburse himself or herself by adding any tax
26 levied by this act on the sale at retail to the sale price.

1 Except as provided by this section, a certificate issued pursuant
2 to this section ~~shall~~ IS not ~~be~~ transferable.

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

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

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