HOUSE BILL No. 5503

February 10, 2004, Introduced by Reps. Byrum, Condino, Wenke, Tobocman, O'Neil, Farrah, Howell, Minore, Accavitti, Newell, Palsrok, Emmons, Koetje, Meyer, Brown, Sak, Gleason, Zelenko, Bieda, Caul, Hager and Shulman and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled

"General sales tax act,"

by amending sections 1, 2, 2a, 3, 4, 4a, 4e, 4f, 4g, 4i, 4j, 4k, 4m, 4o, 4p, 4q, 4r, 4s, 4t, 4u, 4w, 4x, 5b, 6, 8, 9, 10, 17, and 23 (MCL 205.51, 205.52, 205.52a, 205.53, 205.54, 205.54a, 205.54e, 205.54f, 205.54g, 205.54i, 205.54j, 205.54k, 205.54m, 205.54o, 205.54p, 205.54q, 205.54r, 205.54s, 205.54t, 205.54u, 205.54w, 205.54x, 205.55b, 205.56, 205.58, 205.59, 205.60, 205.67, and 205.73), section 1 as amended by 2000 PA 390, sections 2 and 23 as amended by 1993 PA 325, section 2a as added by 1984 PA 228, section 3 as amended by 2002 PA 457, section 4 as amended by 1998 PA 267, sections 4a, 4j, and 4q as amended and sections 4r, 4t, 4u, and 4w as added by 1999 PA 116, section 4g as amended by 2000 PA 417, section 4i as added by 1982 PA 23, section 4k as added by 1986 PA 42, section 4m as added by 1993 PA

HOUSE BILL No. 5503
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238, section 4o as added by 1994 PA 156, section 4p as added by 1998 PA 274, section 4s as added by 1999 PA 105, section 4x as amended by 2001 PA 40, section 5b as added by 2002 PA 510, section 6 as amended by 1998 PA 453, section 9 as amended by 1998 PA 365, section 10 as added by 2000 PA 149, and section 17 as amended by 2001 PA 102, and by adding sections 1a, 4d, 4h, 6b, 11, 12, 18, 19, 20, and 21; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. (1) As used in this act:

(a) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether organized for profit or not, company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and includes the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

~~(b) "Sale at retail" means a transaction by which the ownership of tangible personal property is transferred for consideration, if the transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use, or for any purpose other than for resale, or for lease, if the rental receipts are taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, in the form of tangible personal property to a person licensed under this act, or for demonstration purposes or lending or leasing to a public or~~

~~parochial school offering a course in automobile driving. However, a vehicle purchased by the school shall be certified for driver education and shall not be reassigned for personal use of the school's administrative personnel. For a dealer selling a new car or truck, the exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style in accordance with the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in a calendar year for demonstration purposes.~~

~~(c) "Sale at retail" includes a conditional sale, installment lease sale, or other transfer of property if title is retained as security for the purchase price but is intended to be transferred later.~~

~~(d) "Sale at retail" includes the sale of electricity, natural or artificial gas, or steam, if the sale is made to the consumer or user for consumption or use rather than for resale. Beginning September 20, 1999, sale at retail also includes the sale of the transmission and distribution of electricity, whether the electricity is purchased from the delivering utility or from another provider, if the sale is made to the consumer or user of the electricity for consumption or use rather than for resale. Sale at retail also includes the sale of a prepaid telephone calling card or a prepaid authorization number for telephone use, rather than for resale, and also includes the reauthorization of a prepaid telephone calling card or a prepaid authorization~~

~~number. Sale at retail does not include the sale of water through water mains or the sale of water delivered in bulk tanks in quantities of not less than 500 gallons.~~

~~(e) "Sale at retail" includes computer software offered for general sale to the public or software modified or adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as is basis or as an end product without modification or adaptation. Sale at retail does not include specific charges for technical support or for adapting or modifying prewritten, standard, or canned computer software programs to a purchaser's needs or equipment if those charges are separately stated and identified. Sale at retail does not include computer software originally designed for the exclusive use and special needs of the purchaser. As used in this subdivision, "computer software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result.~~

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

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

~~(h) "Sale at retail" does not include a commercial~~

~~advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. Sale at retail includes black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.~~

~~(i) "Gross proceeds" means the amount received in money, credits, subsidies, property, or other money's worth in consideration of a sale at retail within this state, without a deduction for the cost of the property sold, the cost of material used, the cost of labor or service purchased, an amount paid for interest or a discount, a tax paid on cigarettes or tobacco products at the time of purchase, a tax paid on beer or liquor at the time of purchase or other expenses. Also, a deduction is not allowed for losses. Gross proceeds do not include an amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer. In a taxable sale at retail of a motor vehicle, if another motor vehicle is used as part payment of the purchase~~

~~price, the value of the motor vehicle used as part payment of the purchase price shall be that value agreed to by the parties to the sale as evidenced by the signed statement executed pursuant to section 251 of the Michigan vehicle code, 1949 PA 300, MCL 257.251. A credit or refund for returned goods or a refund less an allowance for use made for a motor vehicle returned under 1986 PA 87, MCL 257.1401 to 257.1410, as certified by the manufacturer on a form provided by the department of treasury, may be deducted.~~

(b) "Sale at retail" or "retail sale" means a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent.

(c) "Gross proceeds" means sales price.

(d) "Sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sales tax. Sales price includes the following subparagraphs (*i*) through (*vi*) and excludes subparagraphs (*vii*) through (*viii*):

(*i*) Seller's cost of the property sold.

(*ii*) Cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller other than taxes imposed by this act, and any other expense of the seller.

(*iii*) Charges by the seller for any services necessary to complete the sale, other than the following:

(A) An amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.

(B) Labor or service charges involved in maintenance and repair work on tangible personal property of others if separately itemized.

(*iv*) Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.

(*v*) Installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.

(*vi*) Credit for any trade-in.

(*vii*) Interest, financing, or carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*viii*) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

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

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

(g) ~~(*l*)~~ "Department" means the ~~revenue division of the~~ department of treasury.

(h) ~~(m)~~ "Taxpayer" means a person subject to a tax under this act.

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

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

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

Sec. 1a. As used in this act:

(a) "Alcoholic beverage" means a beverage suitable for human consumption that contains 1/2 of 1% or more of alcohol by volume.

(b) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(c) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(d) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.

(e) "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services. Delivery charges include, but are not limited to, transportation, shipping, postage, handling, crating, and packing.

(f) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that is all of the following:

(*i*) Required to be labeled as a dietary supplement identifiable by the "supplemental facts" box found on the label as required by 21 CFR 101.36.

(*ii*) Contains 1 or more of the following dietary ingredients:

(A) A vitamin.

(B) A mineral.

(C) An herb or other botanical.

(D) An amino acid.

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient listed in sub-subparagraphs (A) through (E).

(*iii*) Intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in 1 of those forms, is not represented as conventional food or for use as a sole item of a meal or of the diet.

(g) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients, including tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material, but not including multiple items of printed material delivered to a single address.

(h) "Drug" means a compound, substance, or preparation, or any component of a compound, substance, or preparation, other than food or food ingredients, dietary supplements, or alcoholic beverages, intended for human use that is 1 or more of the following:

(*i*) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or

official national formulary, or in any of their supplements.

(*ii*) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

(*iii*) Intended to affect the structure or any function of the body.

(i) "Durable medical equipment" means equipment for home use, other than mobility enhancing equipment, dispensed pursuant to a prescription, including repair or replacement parts for that equipment, that does all of the following:

(*i*) Can withstand repeated use.

(*ii*) Is primarily and customarily used to serve a medical purpose.

(*iii*) Is not useful generally to a person in the absence of illness or injury.

(*iv*) Is not worn in or on the body.

(j) "Electronic" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(k) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. This definition applies only to leases and rentals entered into after the effective date of the amendatory act that added this section and has no retroactive impact on leases and rentals that existed on that date. Lease or rental does not include the following:

(*i*) A transfer of possession or control of tangible personal

property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(*ii*) A transfer of possession or control of tangible personal property under an agreement requiring transfer of title upon completion of the required payments and payment of an option price that does not exceed $100.00 or 1% of the total required payments, whichever is greater.

(*iii*) The provision of tangible personal property along with an operator for a fixed or indeterminate period of time, where that operator is necessary for the equipment to perform as designed. To be necessary, an operator must do more than maintain, inspect, or set up the tangible personal property.

(*iv*) An agreement covering motor vehicles or trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in section 7701(h)(1) of the internal revenue code, 26 USC 7701.

(*l*) "Mobility enhancing equipment" means equipment, other than durable medical equipment or a motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer, dispensed pursuant to a prescription, including repair or replacement parts for that equipment, that is all of the following:

(*i*) Primarily and customarily used to provide or increase the ability to move from 1 place to another and is appropriate for use at home or on a motor vehicle.

(*ii*) Not generally used by a person with normal mobility.

(m) "Prescription" means an order, formula, or recipe, issued in any form of oral, written, electronic, or other means of transmission by a licensed physician or other health professional as defined in section 3501 of the insurance code of 1956, 1956 PA 218, MCL 500.3501.

(n) "Prewritten computer software" means computer software, including prewritten upgrades, that is delivered by any means and that is not designed and developed by the author or other creator to the specifications of a specific purchaser. Prewritten computer software includes the following:

(*i*) Any combination of 2 or more prewritten computer software programs or portions of prewritten computer software programs.

(*ii*) Computer software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than that specific purchaser.

(*iii*) The modification or enhancement of prewritten computer software or portions of prewritten computer software where the modification or enhancement is designed and developed to the specifications of a specific purchaser unless there is a reasonable, separately stated charge or an invoice or other statement of the price is given to the purchaser for the modification or enhancement. If a person other than the original author or creator modifies or enhances prewritten computer software, that person is considered to be the author or creator of only that person's modifications or enhancements.

(o) "Prosthetic device" means a replacement, corrective, or

supportive device, other than contact lenses and dental prosthesis, dispensed pursuant to a prescription, including repair or replacement parts for that device, worn on or in the body to do 1 or more of the following:

(*i*) Artificially replace a missing portion of the body.

(*ii*) Prevent or correct a physical deformity or malfunction of the body.

(*iii*) Support a weak or deformed portion of the body.

(p) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software.

(q) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

Sec. 2. (1) Except as provided in section 2a, there is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, ~~as defined in section 1~~ **by which ownership of tangible personal property is transferred for consideration**, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable as provided by law, less deductions allowed by this act.

(2) The tax under subsection (1) also applies to the following:

(a) The transmission and distribution of electricity, whether the electricity is purchased from the delivering utility or from

another provider, if the sale is made to the consumer or user of the electricity for consumption or use rather than for resale.

(b) The sale of a prepaid telephone calling card or a prepaid authorization number for telephone use, rather than for resale, including the reauthorization of a prepaid telephone calling card or a prepaid authorization number.

(c) A conditional sale, installment lease sale, or other transfer of property, if title is retained as security for the purchase but is intended to be transferred later.

(3) ~~(2)~~ Any person engaged in the business of making sales at retail who is at the same time engaged in some other kind of business, occupation, or profession not taxable under this act shall keep books to show separately the transactions used in determining the tax levied by this act. If the person fails to keep separate books, there shall be levied upon him or her the tax provided for in subsection (1) equal to 6% of the entire gross proceeds of both or all of his or her businesses. The taxes levied by this section are a personal obligation of the taxpayer.

(4) A meal provided free of charge or at a reduced rate to an employee during work hours by a food service establishment licensed by the Michigan department of agriculture for the convenience of the employer is not considered transferred for consideration.

Sec. 2a. (1) For a sale at retail to a person of a vehicle for which a special registration is secured pursuant to section 226(9) of ~~Act No. 300 of the Public Acts of 1949, being section~~

~~257.226 of the Michigan Compiled Laws~~ **the Michigan vehicle code, 1949 PA 300, MCL 257.226**, the tax imposed under this act shall be reduced by the sum of the following amounts:

(a) The use tax imposed on the vehicle by the state to which the vehicle was removed and in which it is registered.

(b) The amount obtained, even if negative, by subtracting the sales tax that would have been imposed on the vehicle by the state to which the vehicle was removed and in which it is registered if the vehicle had been purchased in that state, from the tax otherwise due under this act.

(2) The reduction in the tax made pursuant to subsection (1) shall not exceed the tax otherwise due under this act.

(3) The ~~taxpayer shall obtain from the person purchasing the vehicle, and shall furnish to the department on a form provided by the department, a certification~~ **person purchasing the vehicle shall furnish to the seller a certification, on a form prescribed by the department,** containing the name, address, and signature of the purchaser, a statement indicating the vehicle shall be primarily used, stored, and registered outside of this state, and the name of the jurisdiction in which the vehicle shall be registered.

Sec. 3. (1) ~~If~~ **Subject to subsection (4), if** a person engages or continues in a business for which a privilege tax is imposed by this act, the person shall, under rules the department prescribes, apply for and obtain from the department a license to engage in and to conduct that business for the current tax year. ~~When~~ **If** the department considers it necessary in order to secure the collection of the tax or if an applicant taxpayer has at any time failed, refused, or neglected to pay any tax or interest or penalty upon a tax or has attempted to evade the payment of any tax or interest or penalty upon a tax by means of petition in bankruptcy, or if **the** applicant taxpayer is a corporation and the department has reason to believe that the management or control of the corporation is under persons who have failed to pay any tax or interest or penalty upon a tax under this act, the department shall require a surety bond payable to the state of Michigan, upon which the applicant or taxpayer shall be the obligor, in the sum of not less than $1,000.00 nor more than $25,000.00. The surety bond shall be conditioned that the applicant or taxpayer shall comply with this act and shall promptly file true reports and pay the taxes, interest, and penalties provided for or required by this act. The bonds shall be approved as to the amount and surety by the department. The applicant or taxpayer may in lieu of the surety bond deposit a sum of money with the department in an amount the department determines to guarantee the payment of the tax, interest, and penalty and compliance with this act. However, the amount determined by the department shall not exceed the estimated tax payable during a 1-year period. The applicant or taxpayer shall be licensed to engage in and conduct the business. The department may require the applicant or taxpayer to furnish ~~other and further bond as~~ **any additional bond that** it considers necessary within the limits in this section, after giving a 30-day notice in writing. The license shall be renewed annually if the taxpayer pays the tax accrued to ~~the~~ **this** state under this act. A person shall not engage or continue in a business taxable under this act without securing a license. A person, firm, or corporation engaged solely in industrial processing or agricultural producing under this act and who makes no sales at retail within the meaning of this act is not required to have a license.

(2) The ~~revenue commissioner~~ **state treasurer** or his or her designee, after notice and hearing, may suspend the license of a person who violates or fails to comply with this act or a rule promulgated by the department under this act. The ~~revenue commissioner~~ **state treasurer** or his or her designee may restore licenses after suspension. If a person engages in business taxable under this act while his or her license is in suspension, the tax imposed under this act is imposed and payable with respect to that business.

(3) A person who engages in any business in this state that is taxable under this act and who fails to secure from the ~~revenue commissioner or his or her designee~~ **department** a license to engage in that business or who continues to engage in business after the license has expired or was suspended by the ~~revenue commissioner~~ **state treasurer** or his or her designee is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for not more than 1 year, or both.

(4) A seller registered under the streamlined sales and use tax agreement who is not otherwise obligated to obtain a sales tax license in this state is not required to obtain a sales tax

license because of that registration.

Sec. 4. (1) In computing the amount of tax levied under this act for any month, a taxpayer not subject to section 6(2) may deduct the amount provided by subdivision (a) or (b), whichever is greater:

(a) If the tax that accrued to ~~the~~ **this** state from the sales at retail during the preceding month is remitted to the department on or before the ~~seventh~~ **twelfth** day of the month in which remittance is due, 0.75% of the tax due at a rate of 4% for the preceding monthly period, but not to exceed $20,000.00 of the tax due for that month. If the tax that accrued to ~~the~~ **this** state from the sales at retail during the preceding month is remitted to the department after the ~~seventh~~ **twelfth** day and on or before the ~~fifteenth~~ **twentieth** day of the month in which remittance is due, 0.50% of the tax due at a rate of 4% for the preceding monthly period, but not to exceed $15,000.00 of the tax due for that month.

(b) The tax at a rate of 4% due on $150.00 of taxable gross proceeds for the preceding monthly period, or a prorated portion of $150.00 of the taxable gross proceeds for the preceding month if the taxpayer engaged in business for less than a month.

~~(2) Before January 1, 1999, in computing the amount of tax levied under this act for any month, a taxpayer subject to section 6(2) may deduct the amount provided in this subsection. If the tax that is due to the state is remitted to the department on or before the eleventh day of the month in which remittance is due, 0.75% of the tax due at a rate of 4% but not to exceed~~

~~$20,000.00 of the tax due for that month may be deducted. If the tax that is due to the state is remitted to the department after the eleventh day and on or before the eighteenth day of the month in which remittance is due, 0.50% of the tax due at a rate of 4% but not to exceed $15,000.00 of the tax due for that month may be deducted.~~

(2) ~~(3)~~ Beginning January 1, 1999, in computing the amount of tax levied under this act for any month, a taxpayer who is subject to section ~~6(3)~~ **6(2)** may deduct from the amount of the tax paid 0.50% of the tax due at a rate of 4%.

(3) ~~(4)~~ A deduction is not allowed under this section for payments of taxes made to the department after the day the taxpayer is required to pay, pursuant to section 6, the tax imposed by this act.

(4) ~~(5)~~ If, pursuant to section ~~6(5)~~ **6(4)**, the ~~commissioner of revenue~~ **department** prescribes the filing of returns and the payment of the tax for periods in excess of 1 month, a taxpayer is entitled to a deduction from the tax collections remitted to the department for the extended payment period that is equivalent to the deduction allowed under subsection (1) ~~,~~ **or** (2) ~~, or (3)~~ for monthly periods.

(5) ~~(6)~~ The ~~commissioner~~ **department** may prescribe the filing of estimated returns and annual periodic reconciliations as necessary to carry out the purposes of this section.

~~(7) A person subject to a tax under this act shall not include in the amount of his or her gross proceeds used for the computation of the tax any proceeds of his or her business~~

~~derived from sales to the United States, its unincorporated agencies and instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters and branches, and this state or its departments and institutions or any of its political subdivisions.~~

(6) A seller registered under the streamlined sales and use tax agreement may claim a deduction under this section if provided for in the streamlined sales and use tax administration act.

Sec. 4a. (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, a sale of tangible personal property, subject~~ **Subject** to subsection (2), **the following are exempt from the tax under this act**:

(a) ~~Not~~ **A sale of tangible personal property not** for resale to a nonprofit school, nonprofit hospital, or nonprofit home for the care and maintenance of children or aged persons operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of ~~the~~ **this** state, if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or any restricted group. ~~At the time of the transfer of this tangible personal property, the transferee shall sign a statement, in a form approved by the department, stating that the property is to be used or consumed in connection with the operation of the institution or agency and that the institution or agency qualifies as an exempt entity under this subdivision. The statement shall be accepted by all courts as prima facie evidence of the exemption and the statement shall provide that if the claim for tax exemption is disallowed the transferee will reimburse the transferor for the amount of tax involved.~~ A sale of tangible personal property to a parent cooperative preschool is exempt from taxation under this act. As used in this subdivision, "parent cooperative preschool" means a nonprofit, nondiscriminatory educational institution, maintained as a community service and administered by parents of children currently enrolled in the preschool, that provides an educational and developmental program for children younger than compulsory school age, that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel, and that is licensed by the department of consumer and industry services pursuant to 1973 PA 116, MCL 722.111 to 722.128.

(b) ~~Not~~ **A sale of tangible personal property not** for resale to a regularly organized church or house of religious worship, except the following:

(*i*) Sales in activities that are mainly commercial enterprises.

(*ii*) Sales of vehicles licensed for use on public highways other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of persons for religious purposes.

(c) ~~To~~ **The sale of food to** bona fide enrolled students ~~, of food~~ by a school or other educational institution not operated for profit.

(d) ~~That is~~ **The sale of** a vessel designated for commercial use of registered tonnage of 500 tons or more, if produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of the vessel engaged in interstate commerce.

(e) ~~To~~ **A sale of tangible personal property to** persons engaged in a business enterprise and using or consuming the tangible personal property in the tilling, planting, caring for, or harvesting of the things of the soil; in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth; or in the direct gathering of fish, by net, line, or otherwise only by an owner-operator of the business enterprise, not including a charter fishing business enterprise. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land, and subsurface irrigation pipe, if the land tile or irrigation pipe is used in the production of agricultural products as a business enterprise. ~~At the time of the transfer~~

~~of this tangible personal property, the transferee shall sign a statement, in a form approved by the department, stating that the property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise, or in connection with fishing as an owner-operator business enterprise. The statement shall be accepted by all courts as prima facie evidence of the exemption.~~ This exemption includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption also includes grain drying equipment and natural or propane gas used to fuel that equipment for agricultural purposes. This exemption does not include transfers of food, fuel, clothing, or any similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed and becoming a structural part of real estate.

(f) ~~That is~~ **The sale of** a copyrighted motion picture film or a newspaper or periodical admitted under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established not less than 2 years, and published not less than once a week. Tangible personal property used or consumed in producing a copyrighted motion picture film, a newspaper published more than 14 times per year, or a periodical published more than 14 times per year, and not becoming a component part of that film, newspaper, or periodical is subject to the tax.

~~After December 31, 1993, tangible~~ **Tangible** personal property used or consumed in producing a newspaper published 14 times or less per year or a periodical published 14 times or less per year and that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is exempt from the tax under this subdivision. A claim for a refund for taxes paid before January 1, 1999, under this subdivision shall be made before June 30, 1999. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

(g) ~~To~~ **A sale of tangible personal property to** persons licensed to operate commercial radio or television stations if the property is used in the origination or integration of the various sources of program material for commercial radio or television transmission. This subdivision does not include a vehicle licensed and titled for use on public highways or property used in the transmission to or receiving from an artificial satellite.

(h) ~~That is a hearing aid, contact lenses if prescribed for a specific disease that precludes the use of eyeglasses, or any other apparatus, device, or equipment used to replace or substitute for a part of the human body, or used to assist the disabled person to lead a reasonably normal life if the tangible personal property is purchased on a written prescription or order issued by a health professional as defined by section 21005 of the public health code, 1978 PA 368, MCL 333.21005; a hearing aid battery; or eyeglasses prescribed or dispensed to correct the person's vision by an ophthalmologist, optometrist, or optician.~~ **The sale of a prosthetic device, durable medical equipment, or mobility enhancing equipment.**

(i) ~~That is~~ **The sale of** a vehicle not for resale to a Michigan nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

(j) ~~To~~ **A sale of tangible personal property to** inmates in a penal or correctional institution purchased with scrip **or its equivalent** issued and redeemed by the institution.

(k) ~~To~~ **A sale of textbooks sold by a public or nonpublic school to** or for the use of students enrolled in any part of a kindergarten through twelfth grade program**.** ~~, of textbooks sold by a public or nonpublic school.~~

(*l*) ~~Installed~~ **A sale of tangible personal property installed** as a component part of a water pollution control facility for which a tax exemption certificate is issued pursuant to part 37 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution control facility for which a tax exemption certificate is issued pursuant to part 59 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

~~(m) To a purchaser of a new motor vehicle purchased before January 1, 1993 if the purchaser qualifies for a special registration under section 226(12) of the Michigan vehicle code, 1949 PA 300, MCL 257.226, and the vehicle is purchased through a country determined by the department to be providing a like or complete exemption for the purchase of a new motor vehicle to be removed from that country.~~

(m) ~~(n) That is the following sold or leased~~ **The sale or lease of the following** to an industrial laundry after December 31, 1997:

(*i*) Textiles and disposable products including, but not limited to, soap, paper, chemicals, tissues, deodorizers and dispensers, and all related items such as packaging, supplies, hangers, name tags, and identification tags.

(*ii*) Equipment, whether owned or leased, used to repair and dispense textiles including, but not limited to, roll towel cabinets, slings, hardware, lockers, mop handles and frames, and carts.

(*iii*) Machinery, equipment, parts, lubricants, and repair services used to clean, process, and package textiles and related items, whether owned or leased.

(*iv*) Utilities such as electric, gas, water, or oil.

(*v*) Production washroom equipment and mending and packaging supplies and equipment.

(*vii*) Material handling equipment including, but not limited to, conveyors, racks, and elevators and related control equipment.

(*vii*) Wastewater pretreatment equipment and supplies and related maintenance and repair services.

(n) ~~(o) To~~ **A sale of tangible personal property to** a person holding a direct payment permit under section 8 of the use tax act, 1937 PA 94, MCL 205.98.

(2) The tangible personal property under subsection (1) is exempt only to the extent that that property is used for the exempt purpose if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

Sec. 4d. The following are exempt from the tax under this act:

(a) The sale of tangible personal property to a person who is a lessor licensed under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, and whose rental receipts are taxed or specifically exempt under the use tax act.

(b) The sale of a vehicle acquired for lending or leasing to a public or parochial school for use in a course in driver education.

(c) The sale of a vehicle purchased by a public or parochial school if that vehicle is certified for driver education and is not reassigned for personal use by the school's administrative personnel.

(d) The sale of water through water mains, the sale of water delivered in bulk tanks in quantities of not less than 500 gallons, or the sale of bottled water.

(e) The sale of tangible personal property to a person for demonstration purposes. For a dealer selling a new car or truck, the exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style in accordance with the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in a calendar year for demonstration purposes.

(f) Specific charges for technical support or for adapting or modifying prewritten computer software programs to a purchaser's needs or equipment if those charges are separately stated and identified.

(g) The sale of computer software originally designed for the exclusive use and special needs of the purchaser.

(h) The sale of a commercial advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of

copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. This exemption does not include black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

(i) A sale made outside of the ordinary course of the seller's business.

(j) An isolated transaction by a person not licensed or required to be licensed under this act, in which tangible personal property is offered for sale, sold, or transferred and delivered by the owner.

(k) The sale of oxygen for human use dispensed pursuant to a prescription.

(*l*) The sale of insulin for human use.

Sec. 4e. ~~No person subject to tax under this act need include in the amount of his gross proceeds used for the computation of the tax a sale of tangible personal property to any nonresident person of Michigan actually serving in the United States armed forces of~~ **A sale of** a vehicle from a Michigan retailer for titling and registration in his **or her** home state of residency or domicile **to a nonresident person of Michigan actually serving in the United States armed forces is exempt from the tax under this act**. ~~This claim for exemption shall be allowed only if at~~ **At** the time of sale ~~,~~ or purchase, **the purchaser shall provide** a sworn statement ~~is furnished~~ **to** the vendor from the immediate commanding officer of the purchaser certifying **that** the ~~person~~ **purchaser** claiming the exemption is a member of the armed forces on active duty and furnishing the recorded domiciliary or home address of the purchaser.

Sec. 4f. ~~A person subject to tax under this act may exclude from gross proceeds used for the computation of the tax that portion of the gross proceeds which represents commissions~~ **Commissions** paid to an entity exempt under the provisions of section 4a ~~, to the extent that the gross proceeds are~~ from sales of tangible personal property dispensed through a nonelectrically operated vending machine containing unsorted confections, nuts, or merchandise which, upon insertion of a coin dispenses the same in substantially equal portions, at random and without selection by the customer, and where the consideration is 10 cents or less**, are exempt from the tax under this act**.

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~~ **The** following **are exempt from the tax under this act**:

(a) Sales of ~~prescription~~ drugs for human use **that can only be legally dispensed by prescription** or food ~~for human consumption~~ **or food ingredients**, except prepared food intended for immediate **human** 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~~ **under the** federal food ~~stamps~~ **stamp program or meals eligible to be purchased under the federal food stamp program**.

(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) Live animals purchased with the intent to be slaughtered for human consumption.

~~(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.~~

(2) ~~(e)~~ 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 ~~Farenheit~~ **Fahrenheit** before sale and sold from a ~~mobile facility or~~ vending machine, except milk, nonalcoholic beverages in a sealed container, and fresh fruit**, is subject to the tax**

under this act. ~~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:

(a) ~~(*i*)~~ Actual gross proceeds from sales at retail.

(b) ~~(*ii*)~~ Forty-five percent 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; meals eligible to be purchased with federal food stamps; or nonalcoholic beverages and prepared food intended for immediate consumption provided during work hours for free or at a reduced rate to employees of food service establishments licensed by the Michigan department of agriculture. As used in this subsection, "food service establishment" means that term as defined in section 1107 of the food law of 2000, 2000 PA 92, MCL 289.1107.~~

(3) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients do not include alcoholic beverages and tobacco.

(4) "Prepared food" means the following:

(a) Food sold in a heated state or that is heated by the seller.

(b) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(c) Food sold with eating utensils provided by the seller, including knives, forks, spoons, glasses, cups, napkins, straws, or plates, but not including a container or packaging used to transport the food.

(5) Prepared food does not include the following:

(a) Food that is only cut, repackaged, or pasteurized by the seller.

(b) Raw eggs, fish, meat, poultry, and foods containing those raw items requiring cooking by the consumer in recommendations contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001 food code published by the food and drug administration of the public health service of the department of health and human services, to prevent foodborne illness.

(c) Food sold in an unheated state by weight or volume as a single item, without eating utensils.

(d) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas, sold without eating utensils.

(6) "Prepared food intended for immediate consumption" means prepared food.

Sec. 4h. Sales to the United States, its unincorporated

agencies and instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters and branches, and this state or its departments and institutions or any of its political subdivisions are exempt from the tax under this act.

Sec. 4i. (1) As used in this section, "bad debt" means any portion of a debt that is related to a sale at retail **taxable under this act** for which gross proceeds are not otherwise deductible or excludable ~~, that has become worthless or uncollectible in the time period between the date when taxes accrue to the state for the taxpayer's preceding sales tax return and the date when taxes accrue to the state for the present return,~~ and that is eligible to be claimed, or could be eligible to be claimed if the taxpayer kept accounts on an accrual basis, as a deduction pursuant to section 166 of the internal revenue code**, 26 USC 166**. A bad debt shall not include any **finance charge,** interest**,** or sales tax on the purchase price, uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, any accounts receivable that have been sold to **and remain in the possession of** a third party for collection, and repossessed property.

(2) In computing the amount of tax levied under this act for any month, a taxpayer may deduct the amount of bad debts from his or her gross proceeds used for the computation of the tax. The

amount of gross proceeds deducted must be charged off as uncollectible on the books **and records** of the taxpayer **at the time the debt becomes worthless and deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and must be eligible to be deducted for federal income tax purposes.** ~~If the business consists of taxable and nontaxable transactions, the deduction shall equal the full amount of the bad debt if the bad debt is documented as a taxable transaction in the taxpayer's records. If documentation is not available, the maximum deduction from gross proceeds for any bad debt shall equal the amount of the bad debt multiplied by the quotient obtained by dividing the sales taxed pursuant to this act during the preceding calendar year by all sales during the preceding calendar year, whether or not taxed under this act.~~ **For purposes of this section, a claimant who is not required to file a federal income tax return may deduct a bad debt on a return filed for the period in which the bad debt becomes worthless and is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.** If a consumer or other person pays all or part of a bad debt with respect to which a taxpayer claimed a deduction under this section, the taxpayer ~~shall be~~ **is** liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes in his or her next payment to the department. **Any payments made on a bad**

debt shall be applied proportionally first to the taxable price of the property and the tax on the property and second to any interest, service, or other charge.

(3) Any claim for a bad debt deduction under this section shall be supported by that evidence required by the department. The department shall review any change in the rate of taxation applicable to any taxable sales by a taxpayer claiming a deduction pursuant to this section and shall ensure that the deduction on any bad debt does not result in the taxpayer claiming the deduction recovering any more or less than the taxes imposed on the sale that constitutes the bad debt.

(4) If a certified service provider assumed filing responsibility under the streamlined sales and use tax administration act, the certified service provider may claim, on behalf of the taxpayer, any bad debt allowable to the taxpayer and shall credit or refund that amount of bad debt allowed or refunded to the taxpayer.

(5) If the books and records of a taxpayer under the streamlined sales and use tax agreement that claims a bad debt allowance support an allocation of the bad debts among member states of that agreement, the taxpayer may allocate the bad debts.

Sec. 4j. (1) ~~A person subject to tax under this act may exclude from the gross proceeds used for the computation of the tax a~~ **A** sale of tangible personal property ~~to the extent the tangible personal property is~~ used in a qualified business activity of the purchaser **is exempt from the tax under this act**.

(2) As used in this section, "qualified business activity" means that term as defined in the enterprise zone act**, 1985 PA 224, MCL 125.2101 to 125.2123**.

Sec. 4k. (1) ~~A person subject to tax under this act may exclude from gross proceeds used for the computation of the tax sales of tangible personal property if the~~ **The sale of** tangible personal property **that** is part of a drop shipment ~~and~~ **is exempt from the tax under this act** if the taxpayer complies with the requirements of subsection (3).

(2) As used in this section, "drop shipment" means the direct delivery of tangible personal property to a purchaser in Michigan by a person who has sold the property to another person not licensed under this act but possessing a resale or exemption certificate or other written evidence of exemption authorized by another state, for resale to the Michigan purchaser.

(3) For each transaction for which an exemption is claimed under subsection (1), the taxpayer shall provide**, but not more frequently than annually, any information required by the board under the streamlined sales and use tax agreement in addition to** the following information **in a form prescribed by the department** to the department: ~~annually in any reasonable form:~~

(a) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is sold for resale.

(b) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is shipped in Michigan.

(4) A sale at retail includes a drop shipment.

Sec. 4m. ~~A person subject to tax under this act may exclude from gross proceeds used for the computation of the tax the~~ **A** sale of rail freight or passenger cars, locomotives or other rolling stock, roadway machines and work equipment primarily of a flanged wheel nature, accessories, attachments including parts and materials used for repair, lubricants, or fuel, used in rail operations **is exempt from the tax under this act**. This exemption does not include vehicles licensed and titled for use on public highways.

Sec. 4o. (1) ~~A person subject to tax under this act with aggregate sales at retail in the calendar year of less than $5,000.00 and not operating for profit who is a school, church, hospital, parent cooperative preschool, or nonprofit organization with a tax exempt status under section 4n(1)(a) or (b) may exclude from the proceeds used for the computation of the tax the sales of tangible personal property for fund-raising purposes.~~ **The sale of tangible personal property for fund-raising purposes by a school, church, hospital, parent cooperative preschool, or nonprofit organization that has a tax exempt status under section 4q(1)(a) or (b) and that has aggregate sales at retail in the calendar year of less than $5,000.00 are exempt from the tax under this act.**

(2) A club, association, auxiliary, or other organization affiliated with a school, church, hospital, parent cooperative preschool, or nonprofit organization with a tax exempt status under section ~~4n(1)(a)~~ **4q(1)(a)** or (b) is not considered a

separate person for purposes of this exemption. As used in this section, "school" means each elementary, middle, junior, or high school site within a local school district that represents a district attendance area as established by the board of the local school district.

Sec. 4p. (1) ~~A person subject to tax under this act may exclude from the gross proceeds used for the computation of the tax the~~ **A** sale of tangible personal property purchased by a person engaged in the business of constructing, altering, repairing, or improving real estate for others if the property is to be affixed to or made a structural part of a sanctuary **is exempt from the tax under this act.**

(2) As used in this section:

(a) "Regularly organized church or house of religious worship" means a religious organization qualified under section 501(c)(3) of the internal revenue code**,** ~~of 1986~~ **26 USC 501.**

(b) "Sanctuary" means only that portion of a building that is owned and occupied by a regularly organized church or house of religious worship that is used predominantly and regularly for public worship. Sanctuary includes a sanctuary to be constructed that will be owned and occupied by a regularly organized church or house of religious worship and that will be used predominantly and regularly for public worship.

Sec. 4q. (1) ~~A person subject to the tax under this act may exclude from the gross proceeds used for the computation of this tax, sales~~ **A sale** of tangible personal property not for resale to the following, subject to subsection (5)**, is exempt**

from the tax under this act:

(a) A health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued an exemption ruling letter to purchase items exempt from tax before ~~the effective date of this section~~ **July 17, 1998** signed by the administrator of the sales, use, and withholding taxes division of the department.

(b) An organization not operated for profit and exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the internal revenue code**,** ~~of 1986~~ **26 USC 501.**

(2) The exemptions provided for in subsection (1) do not apply to sales of tangible personal property and sales of vehicles licensed for use on public highways, that are not used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt entity.

(3) At the time of the transfer of the tangible personal property exempt under subsection (1), the transferee shall do 1 of the following:

(a) Present the exemption ruling letter signed by the administrator of the sales, use, and withholding taxes division of the department certifying that the property is to be used or consumed in connection with the operation of the organization.

(b) Present a signed statement, on a form approved by the department, stating that the property is to be used or consumed in connection with the operation of the organization and that the organization qualifies as an exempt organization under this section. The transferee shall also provide to the transferor a copy of the federal exemption letter.

(4) The letter provided under subsection (3)(a) and the statement with the accompanying letter provided under subsection (3)(b) shall be accepted by all courts as prima facie evidence of the exemption and the statement shall provide that if the claim for tax exemption is disallowed, the transferee will reimburse the transferor for the amount of tax involved.

(5) The tangible personal property under subsection (1) is exempt only to the extent that the property is used to carry out the purposes of the organization as stated in the organization's bylaws or articles of incorporation. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

Sec. 4r. (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~~ **All** of the following **are exempt from the tax under this act**:

(a) 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.

(b) A sale of rolling stock purchased by an interstate motor carrier or for rental or lease to an interstate motor carrier and used in interstate commerce.

(2) As used in this section:

(a) "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.

(b) "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.

(c) "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.

(d) "Rolling stock" means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts affixed to either a qualified truck or a trailer designed to be drawn behind a qualified truck.

Sec. 4s. (1) A ~~person subject to tax under this act may exclude from the gross proceeds used for the computation of this tax the~~ sale of investment coins and bullion **is exempt from the tax under this act**.

(2) As used in this section:

(a) "Bullion" means gold, silver, or platinum in a bulk state, where its value depends on its content rather than its form, with a purity of not less than 900 parts per 1,000.

(b) "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal and issued by the United States government or a foreign government with a fair market value greater than the face value of the coins.

Sec. 4t. (1) ~~A person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the~~ **The** sale of tangible personal property to the following after March 30, 1999, subject to subsection (2) **are exempt from the tax under this act**:

(a) An industrial processor for use or consumption in industrial processing.

(b) A person, whether or not the person is an industrial processor, if the tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor.

(c) A person, whether or not the person is an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor.

(d) A person, whether or not the person is an industrial processor, if the tangible personal property is 1 of the following:

(*i*) A computer used in operating industrial processing equipment.

(*ii*) Equipment used in a computer assisted manufacturing system.

(*iii*) Equipment used in a computer assisted design or engineering system integral to an industrial process.

(*iv*) A subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

(*v*) Computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under section 4q.

(*vi*) Equipment used in the production of **prewritten** computer software ~~that is offered for general sale to the public~~ or software modified or adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as-is basis or as an end product without modification or ~~adaption~~ **adaptation.**

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purpose stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Industrial processing includes the following activities:

(a) Production or assembly.

(b) Research or experimental activities.

(c) Engineering related to industrial processing.

(d) Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage.

(e) Planning, scheduling, supervision, or control of production or other exempt activities.

(f) Design, construction, or maintenance of production or other exempt machinery, equipment, and tooling.

(g) Remanufacturing.

(h) Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.

(i) Recycling of used materials for ultimate sale at retail or reuse.

(j) Production material handling.

(k) Storage of in-process materials.

(4) Property that is eligible for an industrial processing exemption includes the following:

(a) Property that becomes an ingredient or component part of the finished product to be sold ultimately at retail.

(b) Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance.

(c) Property that is consumed or destroyed or that loses its identity in an industrial processing activity.

(d) Tangible personal property, not permanently affixed and not becoming a structural part of real estate, that becomes a part of, or is used and consumed in installation and maintenance of, systems used for an industrial processing activity.

(e) Fuel or energy used or consumed for an industrial processing activity.

(f) Machinery, equipment, or materials used within a plant site or between plant sites operated by the same person for movement of tangible personal property in the process of production.

(g) Office equipment, including data processing equipment, used for an industrial processing activity.

(5) Property that is not eligible for an industrial processing exemption includes the following:

(a) Tangible personal property permanently affixed and becoming a structural part of real estate including building utility systems such as heating, air conditioning, ventilating, plumbing, lighting, and electrical distribution, to the point of the last transformer, switch, valve, or other device at which point usable power, water, gas, steam, or air is diverted from distribution circuits for use in industrial processing.

(b) Office equipment, including data processing equipment used for nonindustrial processing purposes.

(c) Office furniture or office supplies.

(d) An industrial processor's own product or finished good that it uses or consumes for purposes other than industrial processing.

(e) Tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user or consumer.

(f) Tangible personal property used for receiving or storage of natural resources extracted by the user or consumer.

(g) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways, except for a vehicle bearing a manufacturer's plate or a specially designed vehicle, together with parts, used to mix and agitate materials at a plant or job site in the concrete manufacturing process.

(h) Tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations.

(i) Tangible personal property used or consumed for the preservation or maintenance of a finished good once it first comes to rest in finished goods inventory storage.

(j) Returnable shipping containers or materials, except as provided in subsection (4)(f).

(k) Tangible personal property used in the production of computer software originally designed for the exclusive use and special needs of the purchaser.

(6) Industrial processing does not include the following activities:

(a) Purchasing, receiving, or storage of raw materials.

(b) Sales, distribution, warehousing, shipping, or advertising activities.

(c) Administrative, accounting, or personnel services.

(d) Design, engineering, construction, or maintenance of real property and nonprocessing equipment.

(e) Plant security, fire prevention, or medical or hospital services.

(7) As used in this section:

(a) "Industrial processing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

(b) "Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.

(c) "Product", as used in subdivision (e), includes but is not limited to a prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a trade or business or to be sold, transferred, leased, or licensed.

(d) "Remanufacturing" means the activity of overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail.

(e) "Research or experimental activity" means activity incident to the development, discovery, or modification of a product or a product related process. Research or experimental activity also includes activity necessary for a product to satisfy a government standard or to receive government approval. Research or experimental activity does not include the following:

(*i*) Ordinary testing or inspection of materials or products for quality control purposes.

(*ii*) Efficiency surveys.

(*iii*) Management surveys.

(*iv*) Market or consumer surveys.

(*v*) Advertising or promotions.

(*vi*) Research in connection with literacy, historical, or similar projects.

Sec. 4u. (1) A ~~person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the~~ sale of tangible personal property to an extractive operator for use or consumption in extractive operations **is exempt from the tax under this act.**

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Extractive operations include the actual production of

oil, gas, brine, or other natural resources. Property eligible for the exemption includes the following:

(a) Casing pipe or drive pipe.

(b) Tubing.

(c) Well-pumping equipment.

(d) Chemicals.

(e) Explosives or acids used in fracturing, acidizing, or shooting wells.

(f) Christmas trees, derricks, or other wellhead equipment.

(g) Treatment tanks.

(h) Piping, valves, or pumps used before movement or transportation of the natural resource from the production area.

(i) Chemicals or acids used in the treatment of crude oil, gas, brine, or other natural resources.

(j) Tangible personal property used or consumed in depositing tailings from hard rock mining processing.

(k) Tangible personal property used or consumed in extracting the lithologic units necessary to process iron ore.

(4) The extractive operation exemption does not include the following:

(a) Tangible personal property consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, and storage and housing facilities.

(b) Tangible personal property consumed or used in transporting the product from the place of extraction, except for tangible personal property consumed or used in transporting extracted materials from the extraction site to the place where the extracted materials first come to rest in finished goods inventory storage.

(c) Tangible personal property that is a product the extractive operator produces and that is consumed or used by the extractive operator for a purpose other than the manufacturing or producing of a product for ultimate sale. The extractor shall account for and remit the tax to ~~the~~ **this** state based upon the product's fair market value.

(d) Equipment, materials, and supplies used in exploring, prospecting, or drilling for oil, gas, brine, or other natural resources.

(e) Equipment, materials, and supplies used in the storing, withdrawing, or distribution of oil, gas, or brine from a storage facility.

(f) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways.

(5) As used in this section:

(a) "Extractive operations" means the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An extractive operation begins when contact is made with the actual type of natural raw product being recovered. Extractive operation includes all necessary processing operations before shipment from the place of extraction. Extractive operations includes all necessary processing operations and movement of the natural resource material until the point at which the natural raw product being recovered first comes to rest in finished goods inventory storage at the extraction site.

(b) An extractive operator is a person who, either directly or by contract, performs extractive operations.

Sec. 4w. (1) For taxes levied after June 30, 1999, a ~~person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the~~ sale of tangible personal property to a person directly engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent that the property is affixed to and made a structural part of a nonprofit hospital or a nonprofit housing entity qualified as exempt under section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a**, is exempt from the tax under this act**.

(2) An exemption shall not be granted under this section for any portion of property otherwise qualifying for exemption under this section if income or a benefit inures directly or indirectly to an individual, private stockholder, or other private person from the independent or nonessential operation of that portion of property.

(3) As used in this section:

(a) "Nonprofit hospital" means 1 of the following:

(*i*) That portion of a building to which 1 of the following applies:

(A) Is owned or operated by an entity exempt under section 501(c)(3) of the internal revenue code**,** ~~of 1986~~ **26 USC 501,** that is licensed as a hospital under part 215 of the public health code, 1978 PA 368, MCL 333.21501 to 333.21568.

(B) Is owned or operated by a governmental unit in which medical attention is provided.

(C) Is owned or operated by an entity or entities exempt under section 501(c)(2) or (3) of the internal revenue code, ~~of 1986~~ **26 USC 501,** in which medical attention is provided.

(*ii*) That portion of real property necessary and related to a building described in subparagraph (*i*) in which medical attention is provided.

(*iii*) A county long-term medical care facility built after December 31, 1995.

(b) "Nonprofit hospital" does not include the following:

(*i*) A freestanding building or other real property of a nursing home or skilled nursing facility licensed under part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e.

(*ii*) A hospice licensed under part 214 of the public health code, 1978 PA 368, MCL 333.21401 to 333.21421.

(*iii*) A home for the aged licensed under part 213 of the public health code, 1978 PA 368, MCL 333.21301 to 333.21333.

(c) "Medical attention" means that level of medical care in which a physician provides acute care or active treatment of medical, surgical, obstetrical, psychiatric, chronic, or rehabilitative conditions, that require the observation, diagnosis, and daily treatment by a physician.

Sec. 4x. (1) A ~~person subject to the tax under this act may exclude from the gross proceeds used for the computation of~~

~~this tax sales~~ **sale** to a domestic air carrier of 1 or more of the following **is exempt from the tax under this act**:

(a) An aircraft that has a maximum certificated takeoff weight of at least 6,000 pounds for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers.

(b) Parts and materials, excluding shop equipment or fuel, affixed or to be affixed to an aircraft that has a maximum certificated takeoff weight of at least 6,000 pounds for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers.

(2) A ~~person subject to the tax under this act may exclude from the gross proceeds used for the computation of this tax sales~~ **sale** of an aircraft to a person for subsequent lease to a domestic air carrier operating under a certificate issued by the federal aviation administration under ~~14 C.F.R. 121~~ **14 CFR 121**, for use solely in the regularly scheduled transport of passengers **is exempt from the tax under this act**.

(3) As used in this section, "domestic air carrier" is limited to entities engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity.

Sec. 5b. (1) ~~Notwithstanding the provisions of section 2, the~~ **The** organizing entity of a qualified athletic event that sells corporate sponsor contracts for the event that include both taxable tangible personal property and ~~nontaxable~~ services may ~~apply the tax only to the amount charged for the sale of~~ **exempt**

the retail sale of the taxable tangible personal property if all of the following criteria have been met:

(a) The organizing entity is exempt or is wholly owned by an entity exempt under section 501(c)(6) of the internal revenue code**,** ~~of 1986~~ **26 USC 501.**

(b) The organizing entity provided both of the following to the department at least 180 days in advance of entering into the first corporate sponsor contract:

(*i*) Written notice of its intent to enter into corporate sponsor contracts.

(*ii*) An itemized schedule of the ~~taxable~~ tangible personal property and ~~nontaxable~~ services that will be provided under each corporate sponsor contract.

(c) The department has given written approval to the organizing ~~entity's allocation of the tax among taxable tangible personal property and nontaxable services~~ **entity.**

(2) As used in this section, "qualified athletic event" means either of the following:

(a) A professional sporting competition in which individuals officially representing at least 2 countries or nations compete.

(b) A professional football competition in which teams compete in a postseason event to determine the league champion.

(3) This section is repealed effective January 1, 2007.

Sec. 6. (1) Each taxpayer, unless otherwise provided by law or as required pursuant to subsection (2), ~~(3), (5), or (6)~~ **(4), or (5)**, on or before the ~~fifteenth~~ **twentieth** day of each month shall make out a return for the preceding month on a form prescribed by the department showing the entire amount of all sales and gross proceeds of his or her business, the allowable deductions, and the amount of tax for which he or she is liable. The taxpayer shall also transmit the return, together with a remittance for the amount of the tax, to the department on or before the ~~fifteenth~~ **twentieth** day of that month. ~~The monthly return shall be signed by the taxpayer or his or her duly authorized agent and, if prepared for the taxpayer by any other person, the return shall so state, give the name and address of that person, be signed by that person, and give the name of that person's employer, if any.~~

~~(2) Before January 1, 1999, each taxpayer that had a total tax liability, after subtracting the tax payments made to the secretary of state under this act or the use tax act, 1937 PA 94, MCL 205.91 to 205.111, or after subtracting the tax credits available under section 6a, in the immediately preceding calendar year of $720,000.00 or more on or before the eighteenth of each month shall remit to the department, by an electronic funds transfer method approved by the commissioner of revenue, an amount equal to 95% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 95% of the actual liability for the current month being reported, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month.~~

(2) ~~(3)~~ Beginning January 1, 1999, each taxpayer that had a total tax liability after subtracting the tax payments made to the secretary of state under this act or the use tax act, 1937 PA 94, MCL 205.91 to 205.111, or after subtracting the tax credits available under section 6a, in the immediately preceding calendar year of $720,000.00 or more shall remit to the department, by an electronic funds transfer method approved by the ~~commissioner of revenue~~ **department** on or before the ~~fifteenth~~ **twentieth** day of the month, an amount equal to 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month. Additionally, the seller shall remit to the department, by an electronic funds transfer method approved by the ~~commissioner of revenue~~ **department** on or before the last day of the month, an amount equal to 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less.

(3) ~~(4)~~ The tax imposed under this act shall accrue to ~~the~~ **this** state on the last day of the month in which the sale is incurred.

(4) ~~(5)~~ The ~~commissioner of revenue~~ **department**, ~~when~~ **if** necessary to insure payment of the tax or to provide a more efficient administration, may require the filing of returns and payment of the tax for other than monthly periods.

(5) ~~(6)~~ A taxpayer who is a materialperson may at the option of the taxpayer include the amount of all taxable sales and gross proceeds from materials furnished to an owner, contractor, subcontractor, repairperson, or consumer on a credit sale basis for the purpose of making an improvement to real property in his or her return in the first quarterly return due following the date in which the materialperson made the credit sale to the owner, contractor, subcontractor, repairperson, or consumer. Notwithstanding subsections (1) through ~~(4)~~ **(3)**, a materialperson may at the option of the taxpayer file quarterly returns for a credit sale only as determined by the department. As used in this subsection, "credit sale" means an extension of credit for the sale of taxable goods by a seller other than a credit card sale; and "materialperson" means a person who provides materials for the improvement of real property, who has registered with and has demonstrated to the department that he or she is primarily engaged in the sale of lumber and building material related products to owners, contractors, subcontractors, repairpersons, or consumers, and who is authorized to file a construction lien upon real property and improvements under the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305.

(6) If a due date falls on a Saturday, Sunday, state holiday, or legal banking holiday, the taxes are due on the next succeeding business day.

Sec. 6b. A taxpayer may claim a credit or refund for returned goods or a refund less an allowance for use made for a motor vehicle returned under 1986 PA 87, MCL 257.1401 to

257.1410, as certified by the manufacturer on a form provided by the department.

Sec. 8. ~~Consolidated returns.~~ Any person engaging in 2 or more places in the same business or businesses taxable under this act, shall file a consolidated return covering all ~~such~~ **the** business activities engaged in within this state**.** ~~and shall be entitled to deduct 1 exemption only in the amount of $50.00 per month as allowed in section 4.~~

Sec. 9. (1) The tax imposed by this act shall be administered by the ~~commissioner~~ **department** pursuant to 1941 PA 122, MCL 205.1 to 205.31, **the streamlined sales and use tax administration act,** and this act. ~~In case of conflict between~~ **If** the provisions of 1941 PA 122, MCL 205.1 to 205.31, **the streamlined sales and use tax administration act,** and this act **conflict**, the provisions of this act ~~shall prevail~~ **apply.**

(2) The department shall promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

~~(3) A claim for a refund under the 1991 amendatory act amending section 4a to provide for the exemption of subsurface irrigation pipe shall be filed not later than September 30, 1991. The approved refunds shall be paid without interest.~~

~~(4) A claim for a refund for the exemption provided by the 1998 amendatory act that added subdivision (q) to section 4a shall be filed not later than 90 days after the effective date of the amendatory act that added this subsection.~~

Sec. 10. (1) If a taxpayer refunds or provides a credit for all or a portion of the amount of the purchase price of returned tangible personal property within the time period for returns stated in the taxpayer's refund policy or 180 days after the initial sale, whichever is sooner, the taxpayer shall also refund or provide a credit for the tax levied under this act that the taxpayer added to all or that portion of the amount of the purchase price that is refunded or credited.

(2) A cause of action against a seller for overcollected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. The purchaser shall provide in the notice sufficient information to determine the validity of the request. In matters relating to the request, a seller is presumed to have a reasonable business practice if in the collection of sales and use tax, the seller has a certified service provider or a system, including a proprietary system, certified by the department and has remitted to this state all taxes collected less any deductions, credits, or collection allowances.

(3) ~~(2)~~ If a taxpayer tenders an amount to a buyer under section 10a of ~~the pricing and advertising of consumer items act,~~ 1976 PA 449, MCL 445.360a, the taxpayer shall refund the tax levied under this act on the difference between the price stamped or affixed to the item and the price charged.

Sec. 11. In a taxable sale at retail of a motor vehicle where another motor vehicle is used as partial payment of the purchase price, the value of the motor vehicle used as partial payment is that value agreed to by the parties to the sale as

evidenced by the signed statement executed under section 251 of the Michigan vehicle code, 1949 PA 300, MCL 257.251.

Sec. 12. (1) If an exemption from the tax under this act is claimed, the seller shall obtain identifying information of the purchaser and the reason for claiming the exemption at the time of the purchase or at a later date. The seller shall obtain the same information for a claimed exemption regardless of the medium in which the transaction occurred.

(2) A seller shall use a standard format for claiming an exemption electronically as adopted by the governing board under the streamlined sales and use tax agreement.

(3) A purchaser is not required to provide a signature to claim an exemption under this act unless a paper exemption form is used.

(4) A seller shall maintain a proper record of all exempt transactions and shall provide the record if requested by the department.

(5) A seller who complies with the requirements of this section is not liable for the tax if a purchaser improperly claims an exemption. A purchaser who improperly claims an exemption is liable for the tax due under this act. This subsection does not apply if a seller fraudulently fails to collect the tax or solicits a purchaser to make an improper claim for exemption.

Sec. 17. (1) A person liable for any tax imposed under this act shall keep accurate and complete beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the department requires. If an exemption from sales tax is claimed because the sale is for resale or for any of the other exemptions or deductions granted under this act, a record shall be kept of the name and address of the person to whom the sale is made, the date of the sale, the article purchased, the type of exemption claimed, the amount of the sale, and, if that person has a sales tax license, the sales tax license number. If a taxpayer maintains the records required under this section, and accepts an exemption certificate from the buyer in good faith on a form prescribed by the department, the taxpayer is not liable for collection of the unpaid tax after a finding that the sale did not qualify for exemption under this act. As used in this section, "good faith" means that the taxpayer received a completed and signed exemption certificate from the buyer. A person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed under this act is liable for the tax imposed under this act unless the transaction is exempt under the provisions of section 4k. These records must be retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law. If the department considers it necessary, the department may require a person, by notice served upon that person, to make a return, render under oath certain statements, or keep certain records the department considers sufficient to show whether or not that person is liable for tax under this act. If the taxpayer fails to file a return or to maintain or preserve proper records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer. For purposes of this section, exemption certificate includes a blanket exemption certificate on a form prescribed by the department that covers all exempt transfers between the taxpayer and the buyer for a period of 4 years or for a period of less than 4 years as stated on the blanket exemption certificate if that period is agreed to by the buyer and taxpayer.

(2) For a period of not less than 30 days or more than 60 days that ends before September 1, 2000, as designated by the department, a person liable for any tax imposed under this act is exempt from the good faith requirement described in subsection (1) if that person submits to the department copies of all sales tax exemption certificates from buyers described in subsection (1).

(3) A buyer eligible to claim any of the exemptions or deductions granted under this act shall register on a form prescribed by the department. If a buyer fails to satisfy the registration requirement 6 months after either notice to register

from the department or becoming eligible to claim an exemption or deduction under this act, whichever is later, the buyer is not entitled to submit an exemption certificate claiming an exemption or deduction otherwise granted by this act until the buyer registers. After the department has issued **a** notice to register, a nonregistered buyer shall be allowed to claim exemption in a refund claim that is filed with the department within the time permitted under section 27a of 1941 PA 122, MCL 205.27a.

(4) If all information described in subsection (1) is otherwise maintained in routine business records, the good faith exemption certificate requirement in subsection (1) does not apply to the following:

(a) A person licensed by the Michigan liquor control commission as a wholesaler for purposes of sales of alcoholic liquor to another person licensed by the Michigan liquor control commission. As used in this subsection, "alcoholic liquor", "authorized distribution agent", and "wholesaler" mean those terms as defined in the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

(b) The Michigan liquor control commission or a person certified by the commission as an authorized distribution agent for purposes of the sale and distribution of alcoholic liquor to a person licensed by the Michigan liquor control commission.

(5) This section does not apply if this state becomes a member of the streamlined sales and use tax agreement.

Sec. 18. (1) A person liable for any tax imposed under this act shall keep accurate and complete beginning and annual

inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the department requires. If an exemption from the tax under this act is claimed by a person because the sale is for resale at retail, a record shall be kept of the sales tax license number if the person has a sales tax license. These records shall be retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law.

(2) If the department considers it necessary, the department may require a person, by notice served upon that person, to make a return, render under oath certain statements, or keep certain records the department considers sufficient to show whether or not that person is liable for the tax under this act.

(3) A person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed under this act is liable for the tax under this act unless the transaction is exempt under the provisions of section 4k.

(4) If the taxpayer fails to file a return or to maintain or preserve proper records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and

the burden of proof of refuting the assessment is upon the taxpayer.

(5) If all the information is maintained as provided under section 12, an exemption certificate is not required for an exemption claim by the following:

(a) A person licensed by the Michigan liquor control commission as a wholesaler for purposes of sales of alcoholic liquor to another person licensed by the Michigan liquor control commission. As used in this subsection, "alcoholic liquor", "authorized distribution agent", and "wholesaler" mean those terms as defined in the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

(b) The Michigan liquor control commission or a person certified by the commission as an authorized distribution agent for purposes of the sale and distribution of alcoholic liquor to a person licensed by the Michigan liquor control commission.

(6) For purposes of this act, a blanket exemption claim covers all exempt transfers between the taxpayer and the buyer for a period of 4 years or for a period of less than 4 years as stated on the blanket exemption claim if that period is agreed to by the buyer and taxpayer.

(7) This section applies if this state is a member state of the streamlined sales and use tax agreement.

Sec. 19. (1) For sourcing a sale at retail for taxation under this act, the following apply:

(a) If a product is received by the purchaser at a business location of the seller, the sale is sourced to that business

location.

(b) If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser's designee, including the location indicated by instructions for delivery to the purchaser, known to the seller.

(c) If subdivision (a) or (b) does not apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address does not constitute bad faith.

(d) If subdivisions (a) through (c) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address is available, provided use of the address does not constitute bad faith.

(e) If subdivisions (a) through (d) do not apply or the seller has insufficient information to apply subdivisions (a) through (d), the sale will be sourced to the location indicated by the address from which the tangible personal property was shipped or from which the computer software delivered electronically was first available for transmission by the seller.

(2) For sourcing the lease or rental of tangible personal property, other than property included in subsection (3) or (4), for taxation under this act, the following apply:

(a) For a lease or rental requiring recurring periodic payments, the first payment is sourced in the same manner provided for a retail sale in subsection (1). Subsequent payments shall be sourced to the primary property location for each period covered by the payment as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at different locations such as business property that accompanies employees on business trips or service calls.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a retail sale in subsection (1).

(3) For sourcing the lease or rental of motor vehicles, trailers, semitrailers, or aircraft that are not transportation equipment, the following apply:

(a) For a lease or rental requiring recurring periodic payments, each payment is sourced to the primary property location as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at a different location.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for

a retail sale in subsection (1).

(4) The lease or rental of transportation equipment shall be sourced in the same manner provided for a retail sale in subsection (1).

(5) Subsections (2) and (3) do not affect the imposition or computation of sales tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(6) As used in this section:

(a) "Receive" and "receipt" mean 1 or more of the following but exclude possession by a shipping company on behalf of the purchaser:

(*i*) Taking possession of tangible personal property.

(*ii*) Making first use of services.

(b) "Transportation equipment" means 1 or more of the following:

(*i*) Locomotives and railcars utilized for the carriage of persons or property in interstate commerce.

(*ii*) Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses, which are registered through the international registration plan and operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(*iii*) Aircraft operated by air carriers authorized and certificated by the United States department of transportation or

other federal or foreign authority to transport air cargo or passengers in interstate or foreign commerce.

(*iv*) Containers designed for use on or component parts attached or secured to the equipment included in subparagraphs (*i*) to (*iii*).

(7) A person may deviate from the sourcing requirements under this section as provided in section 20 or 21.

Sec. 20. (1) A business purchaser other than a holder of a direct pay permit under section 8 of the use tax act, 1937 PA 94, MCL 205.98, that, at the time of its purchase of electronically delivered computer software, knows that the electronically delivered computer software will be concurrently available for use in more than 1 taxing jurisdiction shall deliver to the seller at the time of purchase an MPU exemption form, which shall be prescribed by and available from the department.

(2) Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser is then obligated to pay the applicable tax on a direct pay basis.

(3) A purchaser who delivers an MPU exemption form may use any reasonable, consistent, and uniform method of apportionment of the tax supported by the purchaser's business records as they exist at the time of consummation of the sale.

(4) The MPU exemption form remains in effect for all subsequent sales of electronically delivered computer software by the seller to the purchaser until revoked in writing. However, the apportionment may change based on the business records as

they exist at the time of each subsequent sale.

(5) A business purchaser that is a holder of a direct pay permit is not required to deliver an MPU exemption form to the seller but shall apportion the tax on electronically delivered computer software using any reasonable, consistent, and uniform method supported by the purchaser's business records as they exist at the time of consummation of the sale.

(6) As used in this section, "MPU exemption form" means a multiple points of use exemption form.

Sec. 21. (1) A purchaser of direct mail other than a holder of a direct pay permit under section 8 of the use tax act, 1937 PA 94, MCL 205.98, shall provide to the seller at the time of purchase either a direct mail form as prescribed by the department or information indicating the taxing jurisdictions to which the direct mail is delivered to recipients.

(2) Upon receipt of the direct mail form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser is then obligated to pay the applicable tax on a direct pay basis.

(3) A direct mail form remains in effect for all subsequent sales of direct mail by the seller to the purchaser until revoked in writing.

(4) Upon receipt of information from the purchaser indicating the taxing jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to that delivery information. In the absence of bad faith, the seller is relieved of any further obligation to collect the tax if the

seller collected the tax using the delivery information provided by the purchaser.

(5) If the purchaser does not have a direct pay permit and does not provide the seller with a direct mail form or delivery information as required in subsection (1), the seller shall collect the tax in the same manner as provided in section 19. Nothing in this subsection limits a purchaser's obligation for the tax under this act.

(6) A purchaser who provides the seller with documentation of a direct pay permit is not required to provide a direct mail form or delivery information.

Sec. 23. (1) A person engaged in the business of selling tangible personal property at retail shall not advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed under this act is not considered as an element in the price to the consumer. This act does not prohibit any taxpayer from reimbursing himself or herself by adding to the sale price any tax levied by this act.

(2) Subject to subsection (3), in determining amounts to be added to the sales prices for reimbursement purposes, the seller shall compute the tax to the third decimal place and round up to a whole cent when the third decimal place is greater than 4 or round down to a whole cent when the third decimal place is 4 or less.

(3) ~~(2)~~ The following brackets ~~shall~~ **may** be used **through December 31, 2005** by retailers in determining amounts to be added to sales prices for reimbursement purposes:

Amount of Sale	Tax
1 cent to 10 cents................................	0
11 cents to 24 cents..............................	1 cent
25 cents to 41 cents..............................	2 cents
42 cents to 58 cents..............................	3 cents
59 cents to 74 cents..............................	4 cents
75 cents to 91 cents..............................	5 cents
92 cents to 99 cents..............................	6 cents

For $1.00 and each multiple of $1.00, 6% of the sale price.

(4) ~~(3)~~ A person other than ~~the~~ **this** state may not enrich himself or herself or gain any benefit from the collection or payment of the tax. ~~The use of the above brackets does not relieve the retailer from liability for payment of the full amount of the tax levied by this act.~~

(5) A person subject to tax under this act shall not separately state on an invoice, bill of sale, or other similar document given to the purchaser the tax imposed under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

Enacting section 1. Sections 4c, 4*l*, 4m[1], 5a, 7, 7a, and 7b of the general sales tax act, 1933 PA 167, MCL 205.54c, 205.54*l*, 205.54m[1], 205.55a, 205.57, 205.57a, and 205.57b, are repealed.

Enacting section 2. This amendatory act takes effect _______________.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

(a) Senate Bill No. ________ or House Bill No. 5504 (request no. 03468'03).

(b) Senate Bill No. ________ or House Bill No. 5502 (request no. 03960'03).

(c) Senate Bill No. ________ or House Bill No. 5505 (request no. 05610'03).