

HOUSE BILL No. 5638

March 11, 2004, Introduced by Reps. Meyer, Rocca, Ehardt, Pappageorge and LaJoy and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 1 (MCL 205.51), as amended by 2000 PA 390.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

10 (b) "Sale at retail" means a transaction by which the
11 ownership of tangible personal property is transferred for

1 consideration, if the transfer is made in the ordinary course of
2 the transferor's business and is made to the transferee for
3 consumption or use, or for any purpose other than for resale, or
4 for lease, if the rental receipts are taxable under the use tax
5 act, 1937 PA 94, MCL 205.91 to 205.111, in the form of tangible
6 personal property to a person licensed under this act, or for
7 demonstration purposes or lending or leasing to a public or
8 parochial school offering a course in automobile driving.

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

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

23 (d) "Sale at retail" includes the sale of electricity,
24 natural or artificial gas, or steam, if the sale is made to the
25 consumer or user for consumption or use rather than for resale.
26 Beginning September 20, 1999, sale at retail also includes the
27 sale of the transmission and distribution of electricity, whether

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

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

27 (f) "Sale at retail" includes the sale of tangible personal

1 property by an industrial laundry under a sale, rental, or
2 service agreement with a term of at least 5 days.

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

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

21 (i) "Gross proceeds" means the amount received in money,
22 credits, subsidies, property, or other money's worth in
23 consideration of a sale at retail within this state, without a
24 deduction for the cost of the property sold, the cost of material
25 used, the cost of labor or service purchased, an amount paid for
26 interest or a discount, a tax paid on cigarettes or tobacco
27 products at the time of purchase, a tax paid on beer or liquor at

1 the time of purchase or other expenses. Also, a deduction is not
2 allowed for losses. Gross proceeds do not include an amount
3 received or billed by the taxpayer for remittance to the employee
4 as a gratuity or tip, if the gratuity or tip is separately
5 identified and itemized on the guest check or billed to the
6 customer. In a taxable sale at retail of a motor vehicle, if
7 another motor vehicle is used as part payment of the purchase
8 price, the value of the motor vehicle used as part payment of the
9 purchase price shall be that value agreed to by the parties to
10 the sale as evidenced by the signed statement executed pursuant
11 to section 251 of the Michigan vehicle code, 1949 PA 300,
12 MCL 257.251. **If a motor vehicle is used as part payment in a**
13 **taxable sale at retail of another motor vehicle, the gross**
14 **proceeds is the difference between the agreed-upon value of the**
15 **motor vehicle used as part payment of the purchase price and the**
16 **full retail price of the motor vehicle being purchased.** A credit
17 or refund for returned goods or a refund less an allowance for
18 use made for a motor vehicle returned under 1986 PA 87,
19 MCL 257.1401 to 257.1410, as certified by the manufacturer on a
20 form provided by the department of treasury, may be deducted.

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

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

1 (l) "Department" means the revenue division of the department
2 of treasury.

3 (m) "Taxpayer" means a person subject to a tax under this
4 act.

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

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

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