

HOUSE BILL No. 5555

December 12, 2007, Introduced by Reps. Condino and Bieda and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending sections 1, 1a, 4g, 4k, 4bb, 12, 18, and 21 (MCL 205.51, 205.51a, 205.54g, 205.54k, 205.54bb, 205.62, 205.68, and 205.71), sections 1, 4g, and 4k as amended by and sections 12, 18, and 21 as added by 2004 PA 173, section 1a as amended by 2006 PA 434, and section 4bb as added by 2004 PA 301; and to repeal acts and parts of acts.

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

1 United States, this state, county, or any other group or
2 combination acting as a unit, and includes the plural as well as
3 the singular number, unless the intention to give a more limited
4 meaning is disclosed by the context.

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

8 (c) "Gross proceeds" means sales price.

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

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

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

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

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

27 (B) Labor or service charges involved in maintenance and

1 repair work on tangible personal property of others if separately
2 itemized.

3 (iv) Delivery charges incurred or to be incurred before the
4 completion of the transfer of ownership of tangible personal
5 property **SUBJECT TO THE TAX LEVIED UNDER THIS ACT** from the seller
6 to the purchaser. **A SELLER IS NOT LIABLE UNDER THIS ACT FOR**
7 **DELIVERY CHARGES ALLOCATED TO THE DELIVERY OF EXEMPT PROPERTY.**

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

11 (vi) Credit for any trade-in.

12 (vii) **CONSIDERATION RECEIVED BY THE SELLER FROM THIRD PARTIES**
13 **IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

14 (A) **THE SELLER ACTUALLY RECEIVES CONSIDERATION FROM A PARTY**
15 **OTHER THAN THE PURCHASER AND THE CONSIDERATION IS DIRECTLY RELATED**
16 **TO A PRICE REDUCTION OR DISCOUNT ON THE SALE.**

17 (B) **THE SELLER HAS AN OBLIGATION TO PASS THE PRICE REDUCTION**
18 **OR DISCOUNT THROUGH TO THE PURCHASER.**

19 (C) **THE AMOUNT OF THE CONSIDERATION ATTRIBUTABLE TO THE SALE**
20 **IS FIXED AND DETERMINABLE BY THE SELLER AT THE TIME OF THE SALE OF**
21 **THE ITEM TO THE PURCHASER.**

22 (D) **ONE OF THE FOLLOWING CRITERIA IS MET:**

23 (I) **THE PURCHASER PRESENTS A COUPON, CERTIFICATE, OR OTHER**
24 **DOCUMENTATION TO THE SELLER TO CLAIM A PRICE REDUCTION OR DISCOUNT**
25 **WHERE THE COUPON, CERTIFICATE, OR DOCUMENTATION IS AUTHORIZED,**
26 **DISTRIBUTED, OR GRANTED BY A THIRD PARTY WITH THE UNDERSTANDING**
27 **THAT THE THIRD PARTY WILL REIMBURSE ANY SELLER TO WHOM THE COUPON,**

1 CERTIFICATE, OR DOCUMENTATION IS PRESENTED.

2 (II) THE PURCHASER IDENTIFIES HIMSELF OR HERSELF TO THE SELLER
3 AS A MEMBER OF A GROUP OR ORGANIZATION ENTITLED TO A PRICE
4 REDUCTION OR DISCOUNT. A PREFERRED CUSTOMER CARD THAT IS AVAILABLE
5 TO ANY PATRON DOES NOT CONSTITUTE MEMBERSHIP IN A GROUP OR
6 ORGANIZATION.

7 (III) THE PRICE REDUCTION OR DISCOUNT IS IDENTIFIED AS A THIRD
8 PARTY PRICE REDUCTION OR DISCOUNT ON THE INVOICE RECEIVED BY THE
9 PURCHASER OR ON A COUPON, CERTIFICATE, OR OTHER DOCUMENTATION
10 PRESENTED BY THE PURCHASER.

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

15 (ix) ~~(viii)~~—Any taxes legally imposed directly on the consumer
16 that are separately stated on the invoice, bill of sale, or similar
17 document given to the purchaser.

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

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

25 (g) "Department" means the department of treasury.

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

27 (i) "Tax" includes a tax, interest, or penalty levied under

1 this act.

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

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

21 Sec. 1a. As used in this act:

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

24 **(B) "BUNDLED TRANSACTION" MEANS THE RETAIL SALE OF 2 OR MORE**
25 **DISTINCT AND IDENTIFIABLE PRODUCTS, EXCEPT REAL PROPERTY AND**
26 **SERVICES TO REAL PROPERTY, WHERE THE PRODUCTS ARE SOLD FOR A SINGLE**
27 **NONITEMIZED PRICE. A BUNDLED TRANSACTION DOES NOT INCLUDE THE SALE**

1 OF ANY PRODUCTS IN WHICH THE SALES PRICE VARIES, OR IS NEGOTIABLE,
2 BASED ON THE SELECTION BY THE PURCHASER OF THE PRODUCTS INCLUDED IN
3 THE TRANSACTION. AS USED IN THIS SUBDIVISION:

4 (i) "DISTINCT AND IDENTIFIABLE PRODUCTS" DOES NOT INCLUDE ANY
5 OF THE FOLLOWING:

6 (A) PACKAGING, SUCH AS CONTAINERS, BOXES, SACKS, BAGS, AND
7 BOTTLES OR OTHER MATERIALS SUCH AS WRAPPING, LABELS, TAGS, AND
8 INSTRUCTION GUIDES, THAT ACCOMPANY THE RETAIL SALE OF THE PRODUCTS
9 AND ARE INCIDENTAL OR IMMATERIAL TO THE RETAIL SALE OF THE
10 PRODUCTS, INCLUDING GROCERY SACKS, SHOEBOXES, DRY CLEANING GARMENT
11 BAGS, AND EXPRESS DELIVERY ENVELOPES AND BOXES.

12 (B) A PRODUCT PROVIDED FREE OF CHARGE WITH THE REQUIRED
13 PURCHASE OF ANOTHER PRODUCT. A PRODUCT IS PROVIDED FREE OF CHARGE
14 IF THE SALES PRICE OF THE PRODUCT PURCHASED DOES NOT VARY DEPENDING
15 ON THE INCLUSION OF THE PRODUCT PROVIDED FREE OF CHARGE.

16 (C) ITEMS INCLUDED IN THE SALES PRICE.

17 (ii) "PURCHASE PRICE" MEANS THE PRICE PAID BY THE SELLER FOR
18 THE PROPERTY.

19 (iii) "SINGLE NONITEMIZED PRICE" DOES NOT INCLUDE A PRICE THAT
20 IS SEPARATELY IDENTIFIED BY PRODUCT ON BINDING SALES OR OTHER
21 SUPPORTING SALES-RELATED DOCUMENTATION MADE AVAILABLE TO THE
22 PURCHASER IN PAPER OR ELECTRONIC FORM, INCLUDING, BUT NOT LIMITED
23 TO, AN INVOICE, BILL OF SALE, RECEIPT, CONTRACT, SERVICE AGREEMENT,
24 LEASE AGREEMENT, PERIODIC NOTICE OF RATES AND SERVICES, RATE CARD,
25 OR PRICE LIST.

26 (iv) BUNDLED TRANSACTION DOES NOT INCLUDE ANY OF THE FOLLOWING:

27 (A) THE RETAIL SALE OF TANGIBLE PERSONAL PROPERTY AND A

1 SERVICE IF THE TANGIBLE PERSONAL PROPERTY IS ESSENTIAL TO THE USE
2 OF THE SERVICE AND IS PROVIDED EXCLUSIVELY IN CONNECTION WITH THE
3 SERVICE AND THE TRUE OBJECT OF THE TRANSACTION IS THE SERVICE.

4 (B) THE RETAIL SALE OF SERVICES IF 1 SERVICE IS PROVIDED THAT
5 IS ESSENTIAL TO THE USE OR RECEIPT OF A SECOND SERVICE AND THE
6 FIRST SERVICE IS PROVIDED EXCLUSIVELY IN CONNECTION WITH THE SECOND
7 SERVICE AND THE TRUE OBJECT OF THE TRANSACTION IS THE SECOND
8 SERVICE.

9 (C) A TRANSACTION THAT INCLUDES TAXABLE AND NONTAXABLE
10 PRODUCTS AND THE PURCHASE PRICE OR SALES PRICE OF THE TAXABLE
11 PRODUCTS IS DE MINIMIS. AS USED IN THIS SUB-SUBPARAGRAPH, "DE
12 MINIMIS" MEANS THE SELLER'S PURCHASE PRICE OR SALES PRICE OF THE
13 TAXABLE PRODUCTS IS 10% OR LESS OF THE TOTAL PURCHASE PRICE OR
14 SALES PRICE OF THE PRODUCTS. A SELLER SHALL USE EITHER THE PURCHASE
15 PRICE OR SALES PRICE OF THE PRODUCTS TO DETERMINE IF THE TAXABLE
16 PRODUCTS ARE DE MINIMIS. SELLERS MAY NOT USE A COMBINATION OF THE
17 PURCHASE PRICE AND SALES PRICE OF THE PRODUCTS TO DETERMINE IF THE
18 TAXABLE PRODUCTS ARE DE MINIMIS. A SELLER SHALL USE THE FULL TERM
19 OF A SERVICE CONTRACT TO DETERMINE IF THE TAXABLE PRODUCTS ARE DE
20 MINIMIS.

21 (D) THE RETAIL SALE OF EXEMPT TANGIBLE PERSONAL PROPERTY AND
22 TAXABLE TANGIBLE PERSONAL PROPERTY IF ALL OF THE FOLLOWING
23 CONDITIONS ARE SATISFIED:

24 (I) THE TRANSACTION INCLUDES FOOD AND FOOD INGREDIENTS,
25 PRESCRIPTION OR OVER-THE-COUNTER DRUGS, DURABLE MEDICAL EQUIPMENT,
26 MOBILITY ENHANCING EQUIPMENT, MEDICAL SUPPLIES, OR PROSTHETIC
27 DEVICES.

1 (II) THE SELLER'S PURCHASE PRICE OR SALES PRICE OF THE TAXABLE
2 TANGIBLE PERSONAL PROPERTY IS 50% OR LESS OF THE TOTAL PURCHASE
3 PRICE OR SALES PRICE OF THE BUNDLED TANGIBLE PERSONAL PROPERTY. A
4 SELLER MAY NOT USE A COMBINATION OF THE PURCHASE PRICE AND SALES
5 PRICE OF THE TANGIBLE PERSONAL PROPERTY WHEN MAKING THE 50%
6 DETERMINATION FOR A TRANSACTION.

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

10 (D) ~~(e)~~—"Computer software" means a set of coded instructions
11 designed to cause a computer or automatic data processing equipment
12 to perform a task.

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

15 (F) ~~(e)~~—"Delivery charges" means charges by the seller for
16 preparation and delivery to a location designated by the purchaser
17 of tangible personal property or services. Delivery charges
18 include, but are not limited to, transportation, shipping, postage,
19 handling, crating, and packing. Beginning September 1, 2004,
20 delivery charges do not include the charges for delivery of direct
21 mail if the charges are separately stated on an invoice or similar
22 billing document given to the purchaser. **IF A SHIPMENT INCLUDES**

23 **BOTH EXEMPT PROPERTY AND TAXABLE PROPERTY, THE SELLER SHALL**
24 **ALLOCATE THE DELIVERY CHARGE USING 1 OF THE FOLLOWING METHODS:**

25 (i) **MULTIPLY THE DELIVERY PRICE BY A FRACTION, THE NUMERATOR OF**
26 **WHICH IS THE TOTAL SALES PRICES OF THE TAXABLE PROPERTY AND THE**
27 **DENOMINATOR OF WHICH IS THE TOTAL SALES PRICES OF ALL PROPERTY IN**

1 THE SHIPMENT.

2 (ii) MULTIPLY THE DELIVERY PRICE BY A FRACTION, THE NUMERATOR
3 OF WHICH IS THE TOTAL WEIGHT OF THE TAXABLE PROPERTY AND THE
4 DENOMINATOR OF WHICH IS THE TOTAL WEIGHT OF ALL PROPERTY IN THE
5 SHIPMENT.

6 (G) ~~(f)~~—"Dietary supplement" means any product, other than
7 tobacco, intended to supplement the diet that is all of the
8 following:

9 (i) Required to be labeled as a dietary supplement identifiable
10 by the "supplemental facts" box found on the label as required by
11 21 CFR 101.36.

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

13 (A) A vitamin.

14 (B) A mineral.

15 (C) An herb or other botanical.

16 (D) An amino acid.

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

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

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

26 (H) ~~(g)~~—"Direct mail" means printed material delivered or
27 distributed by United States mail or other delivery service to a

1 mass audience or to addressees on a mailing list provided by the
2 purchaser or at the direction of the purchaser when the cost of the
3 items are not billed directly to the recipients, including tangible
4 personal property supplied directly or indirectly by the purchaser
5 to the direct mail seller for inclusion in the package containing
6 the printed material, but not including multiple items of printed
7 material delivered to a single address.

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

13 (i) Recognized in the official United States pharmacopoeia,
14 official homeopathic pharmacopoeia of the United States, or
15 official national formulary, or in any of their supplements.

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

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

20 (J) ~~(i)~~—"Durable medical equipment" means equipment for home
21 use, other than mobility enhancing equipment, dispensed pursuant to
22 a prescription, including **DURABLE MEDICAL EQUIPMENT** repair or
23 replacement parts, ~~for that equipment,~~ that does all of the
24 following:

25 (i) Can withstand repeated use.

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

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

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

4 **(K) "DURABLE MEDICAL EQUIPMENT REPAIR OR REPLACEMENT PARTS"**
5 **INCLUDES ALL COMPONENTS OR ATTACHMENTS USED IN CONJUNCTION WITH**
6 **DURABLE MEDICAL EQUIPMENT.**

7 (l) ~~(j)~~—"Electronic" means relating to technology having
8 electrical, digital, magnetic, wireless, optical, electromagnetic,
9 or similar capabilities.

10 (m) ~~(k)~~—"Lease or rental" means any transfer of possession or
11 control of tangible personal property for a fixed or indeterminate
12 term for consideration and may include future options to purchase
13 or extend. This definition applies only to leases and rentals
14 entered into after September 1, 2004 and has no retroactive impact
15 on leases and rentals that existed on that date. Lease or rental
16 does not include the following **SUBPARAGRAPHS (i) THROUGH (iii) AND**
17 **INCLUDES SUBPARAGRAPH (iv) :**

18 (i) A transfer of possession or control of tangible personal
19 property under a security agreement or deferred payment plan that
20 requires the transfer of title upon completion of the required
21 payments.

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

27 (iii) The provision of tangible personal property along with an

1 operator for a fixed or indeterminate period of time, where that
2 operator is necessary for the equipment to perform as designed. To
3 be necessary, an operator must do more than maintain, inspect, or
4 set up the tangible personal property.

5 (iv) An agreement covering motor vehicles or trailers if the
6 amount of consideration may be increased or decreased by reference
7 to the amount realized upon sale or disposition of the property as
8 defined in section 7701(h)(1) of the internal revenue code, 26 USC
9 7701.

10 (N) ~~(I)~~—"Mobility enhancing equipment" means equipment, other
11 than durable medical equipment or a motor vehicle or equipment on a
12 motor vehicle normally provided by a motor vehicle manufacturer,
13 dispensed pursuant to a prescription, including repair or
14 replacement parts for that equipment, that is all of the following:

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

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

19 (O) ~~(m)~~—"Prescription" means an order, formula, or recipe,
20 issued in any form of oral, written, electronic, or other means of
21 transmission by a licensed physician or other health professional
22 as defined in section 3501 of the insurance code of 1956, 1956 PA
23 218, MCL 500.3501. **FOR A HEARING AID, PRESCRIPTION INCLUDES AN**
24 **ORDER, INSTRUCTION, OR DIRECTION OF A HEARING AID DEALER OR**
25 **SALESPERSON LICENSED UNDER ARTICLE 13 OF THE OCCUPATIONAL CODE,**
26 **1980 PA 299, MCL 339.1301 TO 339.1309.**

27 (P) ~~(n)~~—"Prewritten computer software" means computer

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

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

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

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

20 (Q) ~~(e)~~—"Prosthetic device" means a replacement, corrective,
21 or supportive device, other than contact lenses and dental
22 prosthesis, dispensed pursuant to a prescription, including repair
23 or replacement parts for that device, worn on or in the body to do
24 1 or more of the following:

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

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

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

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

6 (S) ~~(q)~~—"Tobacco" means cigarettes, cigars, chewing or pipe
7 tobacco, or any other item that contains tobacco.

8 Sec. 4g. (1) The following are exempt from the tax under this
9 act:

10 (a) Sales of drugs for human use that can only be legally
11 dispensed by prescription or food or food ingredients, except
12 prepared food intended for immediate human consumption.

13 (b) The deposit on a returnable container for a beverage or
14 the deposit on a carton or case that is used for returnable
15 containers.

16 (c) Food or tangible personal property purchased under the
17 federal food stamp program or meals **SOLD BY A PERSON EXEMPT FROM**
18 **THE TAX UNDER THIS ACT THAT ARE** eligible to be purchased under the
19 federal food stamp program.

20 (d) Fruit or vegetable seeds and fruit or vegetable plants if
21 purchased at a place of business authorized to accept food stamps
22 by the food and nutrition service of the United States department
23 of agriculture or a place of business that has made a complete and
24 proper application for authorization to accept food stamps but has
25 been denied authorization and provides proof of denial to the
26 department of treasury.

27 (e) Live animals purchased with the intent to be slaughtered

1 for human consumption.

2 (2) Food or drink heated or cooled mechanically, electrically,
3 or by other artificial means to an average temperature above 75
4 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and
5 sold from a vending machine, except milk, nonalcoholic beverages in
6 a sealed container, and fresh fruit, is subject to the tax under
7 this act. The tax due under this act on the sale of food or drink
8 from a vending machine selling both taxable items and items exempt
9 under this subsection shall be calculated under this act based on 1
10 of the following as determined by the taxpayer:

11 (a) Actual gross proceeds from sales at retail.

12 (b) Forty-five percent of proceeds from the sale of items
13 subject to tax under this act or exempt from the tax levied under
14 this act, other than from the sale of carbonated beverages.

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

20 (4) "Prepared food" means the following:

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

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

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

1 transport the food.

2 (5) Prepared food does not include the following:

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

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

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

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

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

19 Sec. 4k. (1) The sale of tangible personal property that is
20 part of a drop shipment is exempt from the tax under this act if
21 the taxpayer complies with the requirements of subsection (3).

22 (2) As used in this section, "drop shipment" means the direct
23 delivery of tangible personal property to a purchaser in Michigan
24 by a person who has sold the property to another person not
25 licensed under this act but possessing a resale or exemption
26 certificate, ~~or~~ other written evidence of exemption authorized by
27 another state, **OR ANY OTHER ACCEPTABLE INFORMATION EVIDENCING**

1 **QUALIFICATION FOR A RESALE EXEMPTION**, for resale to the Michigan
2 purchaser.

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

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

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

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

16 Sec. 4bb. (1) Beginning January 1, 2005, ~~a qualified~~
17 ~~organization subject to the tax under this act may exclude from the~~
18 ~~gross proceeds used for the computation of the tax the sale of an~~
19 ~~eligible automobile to a qualified recipient~~ **THE SALE OF AN**
20 **ELIGIBLE AUTOMOBILE TO A QUALIFIED RECIPIENT BY A QUALIFIED**
21 **ORGANIZATION THAT IS SUBJECT TO THE TAX UNDER THIS ACT IS EXEMPT.**

22 (2) As used in this section:

23 (a) "Eligible automobile" means an automobile that meets all
24 of the following requirements:

25 (i) The automobile has been inspected by a mechanic certified
26 under the motor vehicle service and repair act, 1974 PA 300, MCL
27 257.1301 to 257.1340.

1 (ii) The automobile is insured as required under state law.

2 (iii) The automobile is registered to a qualified recipient.

3 (b) "Qualified organization" means an organization that
4 applies for certification not later than July 1 of the year in
5 which an exemption is claimed under this section and is certified
6 by the department of treasury as meeting all of the following
7 requirements:

8 (i) The organization is exempt from taxation under section
9 501(c)(3) of the internal revenue code, 26 USC 501.

10 (ii) The organization is licensed under the charitable
11 organizations and solicitations act, 1975 PA 169, MCL 400.271 to
12 400.294.

13 (iii) The organization administers a program to provide a
14 qualified recipient with an eligible automobile for transportation
15 to his or her place of employment or for employment-related
16 activities.

17 (c) "Qualified recipient" means a person certified by a
18 qualified organization as meeting all of the following
19 qualifications:

20 (i) The qualified recipient receives or, if he or she applied,
21 would be eligible to receive public assistance through a program
22 created and administered under the social welfare act, 1939 PA 280,
23 MCL 400.1 to 400.119b.

24 (ii) The qualified recipient has a valid Michigan operator's or
25 chauffeur's license.

26 (iii) The qualified recipient is financially capable of meeting
27 any loan payment, insurance payment, or other expenditure

1 associated with the eligible vehicle.

2 (iv) Public transportation is not reasonably available to the
3 qualified recipient, the qualified recipient has no other reliable
4 means by which to commute to his or her place of employment, and
5 the qualified recipient will use the eligible vehicle as his or her
6 primary means of transportation to commute to and from his or her
7 place of employment.

8 (v) The qualified recipient has a demonstrated ability to
9 maintain employment.

10 (vi) If the qualified recipient is currently employed for not
11 less than an average of 20 hours per week, the qualified recipient
12 requires an automobile to retain his or her current employment or
13 to accept a verified offer of employment in a position that is
14 demonstrably superior to his or her current position of employment.

15 (vii) If the qualified recipient is not currently employed or
16 is employed for less than an average of 20 hours per week, the
17 qualified recipient requires an automobile to accept a verified
18 offer of employment of not less than an average of 20 hours per
19 week and cannot begin employment in that position without an
20 automobile.

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

27 (2) A seller shall use a standard format for claiming an

1 exemption electronically as adopted by the governing board under
2 the streamlined sales and use tax agreement.

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

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

9 (5) A seller who complies with the requirements of this
10 section is not liable for the tax if a purchaser improperly claims
11 an exemption. A purchaser who improperly claims an exemption is
12 liable for the tax due under this act. This subsection does not
13 apply if a seller fraudulently fails to collect the tax, ~~or~~
14 solicits a purchaser to make an improper claim for exemption, ~~—OR~~
15 **ACCEPTS AN EXEMPTION FORM WHEN THE PURCHASER CLAIMS AN ENTITY-BASED**
16 **EXEMPTION IF BOTH OF THE FOLLOWING CIRCUMSTANCES OCCUR:**

17 (A) THE SUBJECT OF THE TRANSACTION SOUGHT TO BE COVERED BY THE
18 EXEMPTION FORM IS ACTUALLY RECEIVED BY THE PURCHASER AT A LOCATION
19 OPERATED BY THE SELLER.

20 (B) THE STATE IN WHICH THAT LOCATION OPERATED BY THE SELLER IS
21 LOCATED PROVIDES AN EXEMPTION FORM THAT CLEARLY AND AFFIRMATIVELY
22 INDICATES THAT THE CLAIMED EXEMPTION IS NOT AVAILABLE IN THAT
23 STATE.

24 (6) A SELLER WHO OBTAINS A FULLY COMPLETED EXEMPTION FORM OR
25 CAPTURES THE RELEVANT DATA ELEMENTS AS OUTLINED IN THIS SECTION
26 WITHIN 90 DAYS AFTER THE DATE OF SALE IS NOT LIABLE FOR THE TAX.

27 (7) IF THE SELLER HAS NOT OBTAINED AN EXEMPTION FORM OR ALL

1 RELEVANT DATA ELEMENTS, THE SELLER MAY, WITHIN 120 DAYS AFTER A
2 REQUEST FOR SUBSTANTIATION BY THE DEPARTMENT, EITHER PROVE THAT THE
3 TRANSACTION WAS NOT SUBJECT TO TAX BY OTHER MEANS OR OBTAIN A FULLY
4 COMPLETED EXEMPTION FORM FROM THE PURCHASER, TAKEN IN GOOD FAITH.
5 THE DEPARTMENT MAY, IN ITS DISCRETION, ALLOW A SELLER ADDITIONAL
6 TIME TO COMPLY WITH THIS SUBSECTION.

7 (8) A SELLER IS NOT LIABLE FOR THE TAX IF THE SELLER OBTAINS A
8 BLANKET EXEMPTION FORM FOR A PURCHASER WITH WHICH THE SELLER HAS A
9 RECURRING BUSINESS RELATIONSHIP. RENEWALS OF BLANKET EXEMPTION
10 FORMS OR UPDATES OF EXEMPTION FORM INFORMATION OR DATA ELEMENTS ARE
11 NOT REQUIRED IF THERE IS A RECURRING BUSINESS RELATIONSHIP BETWEEN
12 THE SELLER AND THE PURCHASER. FOR PURPOSES OF THIS SECTION, A
13 RECURRING BUSINESS RELATIONSHIP EXISTS WHEN A PERIOD OF NOT MORE
14 THAN 12 MONTHS ELAPSES BETWEEN SALES TRANSACTIONS.

15 (9) A CERTIFIED SERVICE PROVIDER SHALL BE CONSIDERED A SELLER
16 UNDER THIS SECTION. AS USED IN THIS SECTION, "CERTIFIED SERVICE
17 PROVIDER" MEANS THAT TERM AS DEFINED IN SECTION 25 OF THE
18 STREAMLINED SALES AND USE TAX ADMINISTRATION ACT, 2004 PA 174, MCL
19 205.825.

20 Sec. 18. (1) A person liable for any tax imposed under this
21 act shall keep accurate and complete beginning and annual inventory
22 and purchase records of additions to inventory, complete daily
23 sales records, receipts, invoices, bills of lading, and all
24 pertinent documents in a form the department requires. If an
25 exemption from the tax under this act is claimed by a person
26 because the sale is for resale at retail, a record shall be kept of
27 the sales tax license number if the person has a sales tax license.

1 These records shall be retained for a period of 4 years after the
2 tax imposed under this act to which the records apply is due or as
3 otherwise provided by law.

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

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

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

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

25 (a) A person licensed by the Michigan liquor control
26 commission as a wholesaler for purposes of sales of alcoholic
27 liquor to another person licensed by the Michigan liquor control

1 commission. As used in this subsection, "alcoholic liquor",
2 "authorized distribution agent", and "wholesaler" mean those terms
3 as defined in the Michigan liquor control code of 1998, 1998 PA 58,
4 MCL 436.1101 to 436.2303.

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

9 (6) For purposes of this act, a blanket exemption claim covers
10 all exempt transfers between the taxpayer and the buyer for a
11 period of 4 years or for a period of less than 4 years as stated on
12 the blanket exemption claim if that period is agreed to by the
13 buyer and taxpayer. **RENEWAL OF A BLANKET EXEMPTION CLAIM OR AN
14 UPDATE OF EXEMPTION CLAIM INFORMATION OR DATA ELEMENTS IS NOT
15 REQUIRED IF THERE IS A RECURRING BUSINESS RELATIONSHIP BETWEEN THE
16 SELLER AND THE PURCHASER. FOR PURPOSES OF THIS SUBSECTION, A
17 RECURRING BUSINESS RELATIONSHIP EXISTS WHEN A PERIOD OF NOT MORE
18 THAN 12 MONTHS ELAPSES BETWEEN SALES TRANSACTIONS.**

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

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

27 (2) Upon receipt of the ~~direct mail~~-**EXEMPTION** form, the seller

1 is relieved of all obligation to collect, pay, or remit the
2 applicable tax and the purchaser is then obligated to pay the
3 applicable tax on a direct pay basis.

4 (3) ~~A direct mail~~ **AN EXEMPTION** form remains in effect for all
5 subsequent sales of direct mail by the seller to the purchaser
6 until revoked in writing.

7 (4) Upon receipt of information from the purchaser indicating
8 the taxing jurisdictions to which the direct mail is delivered to
9 recipients, the seller shall collect the tax according to that
10 delivery information. In the absence of bad faith, the seller is
11 relieved of any further obligation to collect the tax if the seller
12 collected the tax using the delivery information provided by the
13 purchaser.

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

20 (6) A purchaser who provides the seller with documentation of
21 a direct pay permit is not required to provide ~~a direct mail~~ **AN**
22 **EXEMPTION** form or delivery information.

23 Enacting section 1. Sections 17 and 20 of the general sales
24 tax act, 1933 PA 167, MCL 205.67 and 205.70, are repealed.