

HOUSE BILL No. 5354

September 10, 2009, Introduced by Rep. Cushingberry and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending sections 2, 4a, 4g, 4i, and 4x (MCL 205.52, 205.54a, 205.54g, 205.54i, and 205.54x), section 2 as amended by 2004 PA 173, section 4a as amended by 2008 PA 415, section 4g as amended by 2008 PA 438, section 4i as amended by 2007 PA 105, and section 4x as amended by 2006 PA 17.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

3 (a) The transmission and distribution of electricity, whether
4 the electricity is purchased from the delivering utility or from
5 another provider, if the sale is made to the consumer or user of
6 the electricity for consumption or use rather than for resale.

7 (b) The sale of a prepaid telephone calling card or a prepaid
8 authorization number **OR CODE** for telephone use, rather than for
9 resale, including the reauthorization of a prepaid telephone
10 calling card or a prepaid authorization number **OR CODE**.

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

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

23 (4) ~~A~~ **BEFORE OCTOBER 1, 2009, A** meal provided free of charge
24 or at a reduced rate to an employee during work hours by a food
25 service establishment licensed ~~by the Michigan department of~~
26 ~~agriculture~~ **UNDER THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1101 TO**
27 **289.8111,** for the convenience of the employer is not considered

1 transferred for consideration.

2 Sec. 4a. (1) Subject to subsection (2), the following are
3 exempt from the tax under this act:

4 (a) A sale of tangible personal property not for resale to a
5 nonprofit school, nonprofit hospital, or nonprofit home for the
6 care and maintenance of children or aged persons operated by an
7 entity of government, a regularly organized church, religious, or
8 fraternal organization, a veterans' organization, or a corporation
9 incorporated under the laws of this state, if the income or benefit
10 from the operation does not inure, in whole or in part, to an
11 individual or private shareholder, directly or indirectly, and if
12 the activities of the entity or agency are carried on exclusively
13 for the benefit of the public at large and are not limited to the
14 advantage, interests, and benefits of its members or any restricted
15 group. A sale of tangible personal property to a parent cooperative
16 preschool is exempt from taxation under this act. As used in this
17 subdivision, "parent cooperative preschool" means a nonprofit,
18 nondiscriminatory educational institution, maintained as a
19 community service and administered by parents of children currently
20 enrolled in the preschool, that provides an educational and
21 developmental program for children younger than compulsory school
22 age, that provides an educational program for parents, including
23 active participation with children in preschool activities, that is
24 directed by qualified preschool personnel, and that is licensed
25 pursuant to 1973 PA 116, MCL 722.111 to 722.128.

26 (b) A sale of tangible personal property not for resale to a
27 regularly organized church or house of religious worship, except

1 the following:

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

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

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

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

14 (e) A sale of tangible personal property to persons engaged in
15 a business enterprise and using or consuming the tangible personal
16 property in the tilling, planting, caring for, or harvesting of the
17 things of the soil; in the breeding, raising, or caring for
18 livestock, poultry, or horticultural products, including transfers
19 of livestock, poultry, or horticultural products for further
20 growth; or in the direct gathering of fish, by net, line, or
21 otherwise only by an owner-operator of the business enterprise, not
22 including a charter fishing business enterprise. This exemption
23 includes machinery that is capable of simultaneously harvesting
24 grain or other crops and biomass and machinery used for the purpose
25 of harvesting biomass. This exemption includes agricultural land
26 tile, which means fired clay or perforated plastic tubing used as
27 part of a subsurface drainage system for land, and subsurface

1 irrigation pipe, if the land tile or irrigation pipe is used in the
2 production of agricultural products as a business enterprise. This
3 exemption includes a portable grain bin, which means a structure
4 that is used or is to be used to shelter grain and that is designed
5 to be disassembled without significant damage to its component
6 parts. This exemption also includes grain drying equipment and
7 natural or propane gas used to fuel that equipment for agricultural
8 purposes. This exemption does not include transfers of food, fuel,
9 clothing, or any similar tangible personal property for personal
10 living or human consumption. This exemption does not include
11 tangible personal property permanently affixed and becoming a
12 structural part of real estate. As used in this subdivision,
13 "biomass" means crop residue used to produce energy or agricultural
14 crops grown specifically for the production of energy.

15 (f) The sale of a copyrighted motion picture film or a
16 newspaper ~~or periodical~~ admitted under federal postal laws and
17 regulations effective September 1, 1985 as second-class mail matter
18 or as a controlled circulation publication or qualified to accept
19 legal notices for publication in this state, as defined by law, or
20 any other newspaper ~~or periodical~~ of general circulation,
21 established not less than 2 years, and published not less than once
22 a week, **OR, BEFORE OCTOBER 1, 2009, A PERIODICAL ADMITTED UNDER**
23 **FEDERAL POSTAL LAWS AND REGULATIONS EFFECTIVE SEPTEMBER 1, 1985 AS**
24 **SECOND-CLASS MAIL.** Tangible personal property used or consumed in
25 producing a copyrighted motion picture film, a newspaper published
26 more than 14 times per year, or a periodical published more than 14
27 times per year, and not becoming a component part of that film,

1 newspaper, or periodical is subject to the tax. Tangible personal
2 property used or consumed in producing a newspaper published 14
3 times or less per year or a periodical published 14 times or less
4 per year and that portion or percentage of tangible personal
5 property used or consumed in producing an advertising supplement
6 that becomes a component part of a newspaper or periodical is
7 exempt from the tax under this subdivision. A claim for a refund
8 for taxes paid before January 1, 1999, under this subdivision shall
9 be made before June 30, 1999. For purposes of this subdivision,
10 tangible personal property that becomes a component part of a
11 newspaper or periodical and consequently not subject to tax
12 includes an advertising supplement inserted into and circulated
13 with a newspaper or periodical that is otherwise exempt from tax
14 under this subdivision, if the advertising supplement is delivered
15 directly to the newspaper or periodical by a person other than the
16 advertiser, or the advertising supplement is printed by the
17 newspaper or periodical.

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

25 (h) The sale of a prosthetic device, durable medical
26 equipment, or mobility enhancing equipment.

27 (i) The sale of a vehicle not for resale to a Michigan

1 nonprofit corporation organized exclusively to provide a community
2 with ambulance or fire department services.

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

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

9 (l) ~~A—BEFORE OCTOBER 1, 2009, A~~ sale of tangible personal
10 property installed as a component part of a water pollution control
11 facility for which a tax exemption certificate is issued pursuant
12 to part 37 of the natural resources and environmental protection
13 act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution
14 control facility for which a tax exemption certificate is issued
15 pursuant to part 59 of the natural resources and environmental
16 protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

17 (m) The sale or lease of the following to an industrial
18 laundry after December 31, 1997:

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

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

27 (iii) Machinery, equipment, parts, lubricants, and repair

1 services used to clean, process, and package textiles and related
2 items, whether owned or leased.

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

4 (v) Production washroom equipment and mending and packaging
5 supplies and equipment.

6 (vi) Material handling equipment including, but not limited to,
7 conveyors, racks, and elevators and related control equipment.

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

10 (n) A sale of tangible personal property to a person holding a
11 direct payment permit under section 8 of the use tax act, 1937 PA
12 94, MCL 205.98.

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

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

20 (a) Sales of drugs for human use that can only be legally
21 dispensed by prescription or food or food ingredients, except
22 prepared food intended for immediate human consumption **AND, AFTER**
23 **OCTOBER 1, 2009, FOOD AND FOOD INGREDIENTS SOLD FROM A VENDING**
24 **MACHINE.**

25 (b) The deposit on a returnable container for a beverage or
26 the deposit on a carton or case that is used for returnable
27 containers.

1 (c) Food or tangible personal property purchased under the
2 federal food stamp program or meals sold by a person exempt from
3 the tax under this act that are eligible to be purchased under the
4 federal food stamp program.

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

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

14 (2) ~~Food~~ **BEFORE OCTOBER 1, 2009, FOOD** or drink heated or
15 cooled mechanically, electrically, or by other artificial means to
16 an average temperature above 75 degrees Fahrenheit or below 65
17 degrees Fahrenheit before sale and sold from a vending machine,
18 except milk, nonalcoholic beverages in a sealed container, and
19 fresh fruit, is subject to the tax under this act. The tax due
20 under this act on the sale of food or drink from a vending machine
21 selling both taxable items and items exempt under this subsection
22 shall be calculated under this act based on 1 of the following as
23 determined by the taxpayer:

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

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

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

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

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

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

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

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

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

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

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

26 (d) Bakery items, including bread, rolls, buns, biscuits,
27 bagels, croissants, pastries, doughnuts, danish, cakes, tortes,

1 pies, tarts, muffins, bars, cookies, and tortillas, sold without
2 eating utensils.

3 (6) "Prepared food intended for immediate **HUMAN** consumption"
4 means prepared food **AND, AFTER OCTOBER 1, 2009, FOOD AND FOOD**
5 **INGREDIENTS SOLD FROM A VENDING MACHINE.**

6 Sec. 4i. (1) As used in this section:

7 (a) "Bad debt" means any portion of a debt that is related to
8 a sale at retail taxable under this act for which gross proceeds
9 are not otherwise deductible or excludable and that is eligible to
10 be claimed, or could be eligible to be claimed if the taxpayer kept
11 accounts on an accrual basis, as a deduction pursuant to section
12 166 of the internal revenue code, 26 USC 166. A bad debt shall not
13 include any finance charge, interest, or sales tax on the purchase
14 price, uncollectible amounts on property that remains in the
15 possession of the taxpayer until the full purchase price is paid,
16 expenses incurred in attempting to collect any account receivable
17 or any portion of the debt recovered, any accounts receivable that
18 have been sold to and remain in the possession of a third party for
19 collection, and repossessed property.

20 (b) Except as provided in subdivision (c), "lender" includes
21 any of the following:

22 (i) Any person who holds or has held an account receivable
23 which that person purchased directly from a taxpayer who reported
24 the tax.

25 (ii) Any person who holds or has held an account receivable
26 pursuant to that person's contract directly with the taxpayer who
27 reported the tax.

1 (iii) The issuer of the private label credit card.

2 (c) "Lender" does not include the issuer of a credit card or
3 instrument that can be used to make purchases from a person other
4 than the vendor whose name or logo appears on the card or
5 instrument or that vendor's affiliates.

6 (d) "Private label credit card" means any charge card, credit
7 card, or other instrument serving a similar purpose that carries,
8 refers to, or is branded with the name or logo of a vendor and that
9 can only be used for purchases from the vendor.

10 (e) "Taxpayer" means a person that has remitted sales tax
11 directly to the department on the specific sales at retail
12 transaction for which the bad debt is recognized for federal income
13 tax purposes or, after September 30, 2009, a lender holding the
14 account receivable for which the bad debt is recognized, or would
15 be recognized if the claimant were a corporation, for federal
16 income tax purposes.

17 (2) In computing the amount of tax levied under this act for
18 any month **BEFORE OCTOBER 1, 2009**, a taxpayer may deduct the amount
19 of bad debts from his or her gross proceeds used for the
20 computation of the tax. The amount of gross proceeds deducted must
21 be charged off as uncollectible on the books and records of the
22 taxpayer at the time the debt becomes worthless and deducted on the
23 return for the period during which the bad debt is written off as
24 uncollectible in the claimant's books and records and must be
25 eligible to be deducted for federal income tax purposes. For
26 purposes of this section, **BEFORE OCTOBER 1, 2009**, a claimant who is
27 not required to file a federal income tax return may deduct a bad

1 debt on a return filed for the period in which the bad debt becomes
2 worthless and is written off as uncollectible in the claimant's
3 books and records and would be eligible for a bad debt deduction
4 for federal income tax purposes if the claimant was required to
5 file a federal income tax return. If a consumer or other person
6 pays all or part of a bad debt with respect to which a taxpayer
7 claimed a deduction under this section, the taxpayer is liable for
8 the amount of taxes deducted in connection with that portion of the
9 debt for which payment is received and shall remit these taxes in
10 his or her next payment to the department. Any payments made on a
11 bad debt shall be applied proportionally first to the taxable price
12 of the property and the tax on the property and second to any
13 interest, service, or other charge.

14 (3) After September 30, 2009, if a taxpayer who reported the
15 tax and a lender execute and maintain a written election
16 designating which party may claim the deduction, a claimant is
17 entitled to a deduction or refund of the tax related to a sale at
18 retail that was previously reported and paid if all of the
19 following conditions are met:

20 (a) No deduction or refund was previously claimed or allowed
21 on any portion of the account receivable.

22 (b) The account receivable has been found worthless and
23 written off by the taxpayer that made the sale or the lender on or
24 after September 30, 2009.

25 (4) Any claim for a bad debt deduction under this section
26 shall be supported by that evidence required by the department. The
27 department shall review any change in the rate of taxation

1 applicable to any taxable sales by a taxpayer claiming a deduction
2 pursuant to this section and shall ensure that the deduction on any
3 bad debt does not result in the taxpayer claiming the deduction
4 recovering any more or less than the taxes imposed on the sale that
5 constitutes the bad debt.

6 (5) If a certified service provider assumed filing
7 responsibility under the streamlined sales and use tax
8 administration act, 2004 PA 174, MCL 205.801 to 205.833, the
9 certified service provider may, **BEFORE OCTOBER 1, 2009**, claim, on
10 behalf of the taxpayer, any bad debt allowable to the taxpayer and
11 shall credit or refund that amount of bad debt allowed or refunded
12 to the taxpayer.

13 (6) If the books and records of a taxpayer under the
14 streamlined sales and use tax agreement under the streamlined sales
15 and use tax administration act, 2004 PA 174, MCL 205.801 to
16 205.833, that claims a bad debt allowance support an allocation of
17 the bad debts among member states of that agreement, the taxpayer
18 may allocate the bad debts.

19 Sec. 4x. (1) A sale to a domestic air carrier of 1 or more of
20 the following is exempt from the tax under this act:

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

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

1 cargo and passengers.

2 (2) ~~The~~**BEFORE OCTOBER 1, 2007, THE** tax levied under this act
3 does not apply to the sale of parts or materials, excluding shop
4 equipment or fuel, affixed or to be affixed to an aircraft that
5 meets all of the following conditions:

6 (a) The aircraft leaves this state within 15 days after the
7 sooner of the issuance of the final billing or authorized approval
8 for final return to service, completion of the maintenance record
9 entry, and completion of the test flight and ground test for
10 inspection as required under 14 CFR 91.407.

11 (b) The aircraft was not based in this state or registered in
12 this state before the parts or materials are affixed to the
13 aircraft and the aircraft is not based in this state or registered
14 in this state after the parts or materials are affixed to the
15 aircraft.

16 (3) The tax levied under this act does not apply to the sale
17 of an aircraft temporarily located in this state for the purpose of
18 prepurchase evaluation or the purpose of prepurchase evaluation and
19 postsale customization if all of the following conditions are
20 satisfied:

21 (a) The aircraft leaves this state within 15 days after
22 authorized approval for final return to service, completion of the
23 maintenance record entry, and completion of the test flight and
24 ground test for inspection as required under 14 CFR 91.407.

25 (b) The aircraft was not based in this state or registered in
26 this state before the prepurchase evaluation or prepurchase
27 evaluation and postsale customization are completed and the

1 aircraft is not based in this state or registered in this state
2 after the prepurchase evaluation or prepurchase evaluation and
3 postsale customization are completed.

4 (4) A sale of an aircraft to a person for subsequent lease to
5 a domestic air carrier operating under a certificate issued by the
6 federal aviation administration under 14 CFR 121, for use solely in
7 the regularly scheduled transport of passengers is exempt from the
8 tax under this act.

9 (5) As used in this section:

10 (a) "Based in this state" means hangared or stored in this
11 state for not less than 10 days in not less than 3 nonconsecutive
12 months during the immediately preceding 12-month period.

13 (b) "Domestic air carrier" is limited to entities engaged
14 primarily in the commercial transport for hire of air cargo,
15 passengers, or a combination of air cargo and passengers as a
16 business activity.

17 (c) "Prepurchase evaluation" means an examination of an
18 aircraft to provide a potential purchaser with information relevant
19 to the potential purchase.

20 (d) "Postsale customization" means any improvement,
21 maintenance, or repair that is performed on an aircraft following a
22 transfer of ownership of the aircraft.

23 (e) "Registered in this state" means an aircraft registered
24 with the state transportation department, bureau of aeronautics or
25 registered with the federal aviation administration to an address
26 located in this state.