



HOUSE BILL No. 4796

May 9, 1995, Introduced by Rep. Jellema and referred to the Committee on Tax Policy.

A bill to amend section 1 of Act No. 167 of the Public Acts of 1933, entitled as amended "General sales tax act," as amended by Act No. 127 of the Public Acts of 1994, being section 205.51 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1 of Act No. 167 of the Public Acts of
2 1933, as amended by Act No. 127 of the Public Acts of 1994, being
3 section 205.51 of the Michigan Compiled Laws, is amended to read
4 as follows:

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

6 (a) "Person" means an individual, firm, partnership, joint
7 venture, association, social club, fraternal organization,
8 municipal or private corporation, whether organized for profit or
9 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" means a transaction by which the owner-
6 ship of tangible personal property is transferred for considera-
7 tion, if the transfer is made in the ordinary course of the
8 transferor's business and is made to the transferee for consump-
9 tion or use, or for any purpose other than for resale, or for
10 lease, if the rental receipts are taxable under the use tax act,
11 Act No. 94 of the Public Acts of 1937, ~~as amended,~~ being sec-
12 tions 205.91 to 205.111 of the Michigan Compiled Laws, in the
13 form of tangible personal property to a person licensed under
14 this act, or for demonstration purposes or lending or leasing to
15 a public or parochial school offering a course in automobile
16 driving. However, a vehicle purchased by the school shall be
17 certified for driver education and shall not be reassigned for
18 personal use of the school's administrative personnel. For a
19 dealer selling a new car or truck, the exemption for demonstra-
20 tion purposes shall be determined by the number of new cars and
21 trucks sold during the current calendar year or the immediately
22 preceding year without regard to specific make or style in
23 accordance with the following schedule of 0 to 25, 2 units; 26 to
24 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but
25 not to exceed 25 cars and trucks in a calendar year for demon-
26 stration purposes.

1 (c) "Sale at retail" includes the sale of tangible personal
2 property to persons directly engaged in the business of
3 constructing, altering, repairing, or improving real estate for
4 others except property affixed to and made a structural part of
5 the real estate of a nonprofit hospital, ~~or~~ nonprofit housing,
6 OR NONPROFIT SCHOOL. A nonprofit hospital or nonprofit housing
7 includes only the property of a nonprofit hospital or the homes
8 or dwelling places constructed by a nonprofit housing entity
9 qualified as exempt pursuant to section 15a of the state housing
10 development authority act of 1966, Act No. 346 of the Public Acts
11 of 1966, ~~as amended,~~ being section 125.1415a of the Michigan
12 Compiled Laws, the income or property of which does not directly
13 or indirectly inure to the benefit of an individual, private
14 stockholder, or other private person.

15 (d) "Sale at retail" includes a conditional sale, install-
16 ment lease sale, and other transfer of property if title is
17 retained as security for the purchase price but is intended to be
18 transferred later.

19 (e) "Sale at retail" includes the sale of electricity, natu-
20 ral or artificial gas, or steam if made to the consumer or user
21 for consumption or use rather than for resale. Sale at retail
22 does not include the sale of water through water mains or the
23 sale of water delivered in bulk tanks in quantities of not less
24 than 500 gallons.

25 (f) "Sale at retail" includes computer software offered for
26 general sale to the public or software modified or adapted to the
27 user's needs or equipment by the seller, only if the software is

1 available for sale from a seller of software on an as is basis or
2 as an end product without modification or adaptation. Sale at
3 retail does not include specific charges for technical support or
4 for adapting or modifying prewritten, standard, or canned com-
5 puter software programs to a purchaser's needs or equipment if
6 those charges are separately stated and identified. Sale at
7 retail does not include computer software originally designed for
8 the exclusive use and special needs of the purchaser. As used in
9 this subdivision, "computer software" means a set of statements
10 or instructions that when incorporated in a machine usable medium
11 is capable of causing a machine or device having information pro-
12 cessing capabilities to indicate, perform, or achieve a particu-
13 lar function, task, or result.

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

18 (h) "Gross proceeds" means the amount received in money,
19 credits, subsidies, property, or other money's worth in consider-
20 ation of a sale at retail within this state, without a deduction
21 for the cost of the property sold, the cost of material used, the
22 cost of labor or service purchased, an amount paid for interest
23 or a discount, a tax paid on cigarettes or tobacco products at
24 the time of purchase, a tax paid on beer or liquor at the time of
25 purchase or other expenses. Also, a deduction is not allowed for
26 losses. Gross proceeds does not include an amount received or
27 billed by the taxpayer for remittance to the employee as a

1 gratuity or tip, if the gratuity or tip is separately identified
2 and itemized on the guest check or billed to the customer. In a
3 taxable sale at retail of a motor vehicle, if another motor vehi-
4 cle is used as part payment of the purchase price, the value of
5 the motor vehicle used as part payment of the purchase price
6 shall be that value agreed to by the parties to the sale as evi-
7 denced by the signed statement executed pursuant to section 251
8 of the Michigan vehicle code, Act No. 300 of the Public Acts of
9 1949, ~~as amended,~~ being section 257.251 of the Michigan
10 Compiled Laws. A credit or refund for returned goods or a refund
11 less an allowance for use made for a motor vehicle returned under
12 Act No. 87 of the Public Acts of 1986, being sections 257.1401 to
13 257.1410 of the Michigan Compiled Laws, as certified by the manu-
14 facturer on a form provided by the department of treasury, may be
15 deducted.

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

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

23 (k) "Department" means the revenue division of the depart-
24 ment of treasury.

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

1 (m) "Tax" includes a tax, interest, or penalty levied under
2 this act.

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