

HOUSE BILL No. 4040

January 28, 2003, Introduced by Rep. Rocca and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 4g (MCL 205.54g), as amended by 2000 PA 417.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4g. (1) A person subject to tax under this act may
2 exclude from the amount of the gross proceeds used for the
3 computation of the tax 1 or more of the following:

4 (a) Sales of prescription drugs for human use,
5 **nonprescription medicines or drugs for human use**, or food for
6 human consumption, except prepared food intended for immediate
7 consumption.

8 (b) The deposit on a returnable container for a beverage or
9 the deposit on a carton or case that is used for returnable
10 containers.

11 (c) Food or tangible personal property purchased with federal

1 food stamps.

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

9 (2) "Prescription drugs for human use" means insulin or a
10 drug dispensed by a licensed pharmacist pursuant to a written
11 prescription prescribed by a licensed physician or other health
12 professional as defined by section ~~21005 of the public health~~
13 ~~code, 1978 PA 368, MCL 333.21005~~ **3501 of the insurance code of**
14 **1956, 1956 PA 218, MCL 500.3501**, for the use of a designated
15 ~~person~~ **individual**, or oxygen dispensed pursuant to a written
16 prescription or order issued by a licensed physician or other
17 health professional as defined in section ~~21005 of the public~~
18 ~~health code, 1978 PA 368, MCL 333.21005~~ **3501 of the insurance**
19 **code of 1956, 1956 PA 218, MCL 500.3501.**

20 (3) "Food for human consumption" means all food and drink
21 items, including bottled water, intended primarily for human
22 consumption except beverages with an alcohol content of 1/2 of 1%
23 or more by volume, tobacco and tobacco products, and prepared
24 food intended for immediate consumption. Food for human
25 consumption includes live animals purchased with the intent to be
26 slaughtered for human consumption.

27 (4) "Prepared food intended for immediate consumption" means

1 a retail sale of 1 or more of the following:

2 (a) Food or drink prepared and served for immediate
3 consumption at or near the premises or ordinarily sold on a
4 takeout basis for immediate consumption either on or off the
5 premises. For the purposes of this section premises includes the
6 total space and facilities in or on which a retailer conducts his
7 or her business, including, but not limited to, parking areas for
8 the convenience of in-car consumption, outdoor tables, benches,
9 chairs, and similar conveniences.

10 (b) Food or drink furnished, prepared, or served for
11 immediate consumption at a table, chair, or counter or from a
12 tray, glass, dish, container, or other tableware.

13 (c) Food or drink arranged on a plate or platter, whether
14 intended for individual or multiple servings and whether sold by
15 the pound or by the serving; a sandwich, either hot or cold; or a
16 combination of taxable and nontaxable items when sold as a plate
17 or packaged as a meal, even though intended for more than 1
18 serving.

19 (d) Food that is cooked to the order of the purchaser, or
20 that is cooked and maintained at a temperature higher than the
21 surrounding air temperature before sale, or prepared food that is
22 sold by the piece rather than by weight or measure.

23 (e) Food or drink heated or cooled mechanically,
24 electrically, or by other artificial means to an average
25 temperature above 75 degrees Fahrenheit or below 65 degrees
26 Fahrenheit before sale and sold from a mobile facility or vending
27 machine, except milk, nonalcoholic beverages in a sealed

1 container, and fresh fruit. A refund shall not be made for any
2 taxes paid after December 31, 1994 and before January 16, 1997
3 for food or drink otherwise exempt under this subdivision. The
4 tax due under this act on the sale of food or drink from a
5 vending machine selling both taxable items and items exempt under
6 this subsection shall be calculated under this act after December
7 31, 1994 based on 1 of the following as determined by the
8 taxpayer:

9 (i) Actual gross proceeds from sales at retail.

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

13 (5) Prepared food intended for immediate consumption does not
14 include bakery products for off-premises consumption, such as
15 doughnuts, pastry, bread, and cakes; meals eligible to be
16 purchased with federal food stamps; or nonalcoholic beverages and
17 prepared food intended for immediate consumption provided during
18 work hours for free or at a reduced rate to employees of food
19 service establishments licensed by the Michigan department of
20 agriculture. As used in this subsection, "food service
21 establishment" means that term as defined in section 1107 of the
22 food law of 2000, 2000 PA 92, MCL 289.1107.

23 (6) **"Nonprescription medicines or drugs for human use" means**
24 **a medicine or drug, whether applied topically or ingested, that**
25 **is prepackaged and fully prepared by the manufacturer or producer**
26 **for use by an individual, has a primary function to alleviate or**
27 **prevent discomfort or pain, and is sold over the counter without**

1 the requirement of a written prescription prescribed by a
2 licensed physician or other health professional as defined by
3 section 3501 of the insurance code of 1956, 1956 PA 218, MCL
4 500.3501.