



# HOUSE BILL No. 4080

January 11, 1995, Introduced by Reps. Bush, Hill, Perricone, Lowe, Horton, Cropsey, Bullard, London and Goschka 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  
9 or 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 sections  
12 205.91 to 205.111 of the Michigan Compiled Laws, in the form of  
13 tangible personal property to a person licensed under this act,  
14 or for demonstration purposes or lending or leasing to a public  
15 or parochial school offering a course in automobile driving.  
16 However, a vehicle purchased by the school shall be certified for  
17 driver education and shall not be reassigned for personal use of  
18 the school's administrative personnel. For a dealer selling a  
19 new car or truck, the exemption for demonstration purposes shall  
20 be determined by the number of new cars and trucks sold during  
21 the current calendar year or the immediately preceding year with-  
22 out regard to specific make or style in accordance with the fol-  
23 lowing schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to  
24 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars  
25 and trucks in a calendar year for demonstration purposes.

26 (c) "Sale at retail" includes the sale of tangible personal  
27 property to persons directly engaged in the business of

1 constructing, altering, repairing, or improving real estate for  
2 others except property affixed to and made a structural part of  
3 the real estate of a nonprofit hospital or nonprofit housing. A  
4 nonprofit hospital or nonprofit housing includes only the prop-  
5 erty of a nonprofit hospital or the homes or dwelling places con-  
6 structed by a nonprofit housing entity qualified as exempt pursu-  
7 ant to section 15a of the state housing development authority act  
8 of 1966, Act No. 346 of the Public Acts of 1966, as amended,  
9 being section 125.1415a of the Michigan Compiled Laws, the income  
10 or property of which does not directly or indirectly inure to the  
11 benefit of an individual, private stockholder, or other private  
12 person.

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

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

23 (f) "Sale at retail" includes computer software offered for  
24 general sale to the public or software modified or adapted to the  
25 user's needs or equipment by the seller, only if the software is  
26 available for sale from a seller of software on an as is basis or  
27 as an end product without modification or adaptation. Sale at

1 retail does not include specific charges for technical support or  
2 for adapting or modifying prewritten, standard, or canned com-  
3 puter software programs to a purchaser's needs or equipment if  
4 those charges are separately stated and identified. Sale at  
5 retail does not include computer software originally designed for  
6 the exclusive use and special needs of the purchaser. As used in  
7 this subdivision, "computer software" means a set of statements  
8 or instructions that when incorporated in a machine usable medium  
9 is capable of causing a machine or device having information pro-  
10 cessing capabilities to indicate, perform, or achieve a particu-  
11 lar function, task, or result.

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

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

1 taxable sale at retail of a motor vehicle, if another motor  
2 vehicle is used as part payment of the purchase price, the value  
3 of the motor vehicle used as part payment of the purchase price  
4 shall be that value agreed to by the parties to the sale as evi-  
5 denced by the signed statement executed pursuant to section 251  
6 of the Michigan vehicle code, Act No. 300 of the Public Acts of  
7 1949, as amended, being section 257.251 of the Michigan Compiled  
8 Laws. IF A MOTOR VEHICLE, TRAILER COACH, AIRCRAFT, OR TITLED  
9 WATERCRAFT IS USED AS PART PAYMENT IN A TAXABLE SALE AT RETAIL OF  
10 ANOTHER MOTOR VEHICLE, TRAILER COACH, AIRCRAFT, OR TITLED WATER-  
11 CRAFT, RESPECTIVELY, THE GROSS PROCEEDS ARE THE DIFFERENCE  
12 BETWEEN THE AGREED-UPON VALUE OF THE MOTOR VEHICLE, TRAILER  
13 COACH, AIRCRAFT, OR TITLED WATERCRAFT USED AS PART PAYMENT OF THE  
14 PURCHASE PRICE AND THE FULL RETAIL PRICE OF THE NEW MOTOR VEHI-  
15 CLE, TRAILER COACH, AIRCRAFT, OR TITLED WATERCRAFT BEING  
16 PURCHASED. A credit or refund for returned goods or a refund less  
17 an allowance for use made for a motor vehicle returned under Act  
18 No. 87 of the Public Acts of 1986, being sections 257.1401 to  
19 257.1410 of the Michigan Compiled Laws, as certified by the manu-  
20 facturer on a form provided by the department of treasury, may be  
21 deducted.

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

25 (j) "Tax year" or "taxable year" means the fiscal year of  
26 the state or the taxpayer's fiscal year if permission is obtained

1 by the taxpayer from the department to use the taxpayer's fiscal  
2 year as the tax period instead.

3 (k) "Department" means the revenue division of the depart-  
4 ment of treasury.

5 (l) "Taxpayer" means a person subject to a tax under this  
6 act.

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

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