



HOUSE BILL No. 4452

February 22, 1995, Introduced by Reps. Bullard and Profit and referred to the Committee on Tax Policy.

A bill to amend sections 1 and 4a of Act No. 167 of the Public Acts of 1933, entitled as amended "General sales tax act," section 1 as amended by Act No. 127 of the Public Acts of 1994 and section 4a as amended by Act No. 156 of the Public Acts of 1994, being sections 205.51 and 205.54a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1 and 4a of Act No. 167 of the Public
2 Acts of 1933, section 1 as amended by Act No. 127 of the Public
3 Acts of 1994 and section 4a as amended by Act No. 156 of the
4 Public Acts of 1994, being sections 205.51 and 205.54a of the
5 Michigan Compiled Laws, are amended to read as follows:

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

1 (a) "Person" means an individual, firm, partnership, joint
2 venture, association, social club, fraternal organization,
3 municipal or private corporation, whether organized for profit or
4 not, company, estate, trust, receiver, trustee, syndicate, the
5 United States, this state, county, or any other group or combina-
6 tion acting as a unit, and includes the plural as well as the
7 singular number, unless the intention to give a more limited
8 meaning is disclosed by the context.

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

1 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but
2 not to exceed 25 cars and trucks in a calendar year for demon-
3 stration purposes.

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

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

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

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

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

21 (H) "SALE AT RETAIL" DOES NOT INCLUDE A SERVICE IMPLEMENT
22 PRODUCED BY A PERSON PROVIDING A SERVICE WHOSE FEE, IF ANY, IS
23 BASED ON THE SERVICE PROVIDED RATHER THAN A TANGIBLE PRODUCT OF
24 THAT SERVICE. AS USED IN THIS SUBDIVISION, "SERVICE IMPLEMENT"
25 MEANS A TANGIBLE OBJECT THAT IS UNIQUE, OF NO INTRINSIC VALUE, OF
26 NO LITERARY OR ARTISTIC VALUE, AND OF NO VALUE TO ANYONE OTHER
27 THAN THE PERSON WHO COMMISSIONED THE SERVICE. SERVICE IMPLEMENT

1 INCLUDES, BUT IS NOT LIMITED TO, AN ANNUAL REPORT OR FINANCIAL
2 AUDIT PREPARED BY AN ACCOUNTANT; AN AUDIOTAPE OR VIDEOTAPE MASTER
3 FOR AN ADVERTISEMENT PREPARED BY A POSTPRODUCTION SERVICE; AN
4 ORIGINAL DESIGN OR PLAN PREPARED BY AN ARCHITECT; A WILL, CON-
5 TRACT, DEED, OR OTHER LEGAL DOCUMENT PREPARED BY AN ATTORNEY; A
6 LAYOUT OR ARTWORK FOR AN ADVERTISEMENT PREPARED BY A COMMERCIAL
7 ARTIST; A TAX RETURN PREPARED BY AN INCOME TAX SERVICE; A PHOTO-
8 GRAPH FOR REPRODUCTION IN AN ADVERTISEMENT CREATED BY A PHOTOGRA-
9 PHER; OR AN ELECTROCARDIOGRAM OR PRESCRIPTION ORDERED BY A
10 PHYSICIAN.

11 (I) ~~(h)~~ "Gross proceeds" means the amount received in
12 money, credits, subsidies, property, or other money's worth in
13 consideration of a sale at retail within this state, without a
14 deduction for the cost of the property sold, the cost of material
15 used, the cost of labor or service purchased, an amount paid for
16 interest or a discount, a tax paid on cigarettes or tobacco prod-
17 ucts at the time of purchase, a tax paid on beer or liquor at the
18 time of purchase or other expenses. Also, a deduction is not
19 allowed for losses. Gross proceeds does not include an amount
20 received or billed by the taxpayer for remittance to the employee
21 as a gratuity or tip, if the gratuity or tip is separately iden-
22 tified and itemized on the guest check or billed to the
23 customer. In a taxable sale at retail of a motor vehicle, if
24 another motor vehicle is used as part payment of the purchase
25 price, the value of the motor vehicle used as part payment of the
26 purchase price shall be that value agreed to by the parties to
27 the sale as evidenced by the signed statement executed pursuant

1 to section 251 of the Michigan vehicle code, Act No. 300 of the
2 Public Acts of 1949, ~~as amended,~~ being section 257.251 of the
3 Michigan Compiled Laws. A credit or refund for returned goods or
4 a refund less an allowance for use made for a motor vehicle
5 returned under Act No. 87 of the Public Acts of 1986, being
6 sections 257.1401 to 257.1410 of the Michigan Compiled Laws, as
7 certified by the manufacturer on a form provided by the depart-
8 ment of treasury, may be deducted.

9 (J) ~~(i)~~ "Business" includes an activity engaged in by a
10 person or caused to be engaged in by that person with the object
11 of gain, benefit, or advantage, either direct or indirect.

12 (K) ~~(j)~~ "Tax year" or "taxable year" means the fiscal year
13 of the state or the taxpayer's fiscal year if permission is
14 obtained by the taxpayer from the department to use the
15 taxpayer's fiscal year as the tax period instead.

16 (L) ~~(k)~~ "Department" means the revenue division of the
17 department of treasury.

18 (M) ~~(l)~~ "Taxpayer" means a person subject to a tax under
19 this act.

20 (N) ~~(m)~~ "Tax" includes a tax, interest, or penalty levied
21 under this act.

22 (2) If the department determines that it is necessary for
23 the efficient administration of this act to regard an unlicensed
24 person, including a salesperson, representative, peddler, or can-
25 vasser as the agent of the dealer, distributor, supervisor, or
26 employer under whom the unlicensed person operates or from whom
27 the unlicensed person obtains the tangible personal property sold

1 by the unlicensed person, irrespective of whether the unlicensed
2 person is making sales on the unlicensed person's own behalf or
3 on behalf of the dealer, distributor, supervisor, or employer,
4 the department may so regard the unlicensed person and may regard
5 the dealer, distributor, supervisor, or employer as making sales
6 at retail at the retail price for the purposes of this act.

7 Sec. 4a. A person subject to tax under this act may exclude
8 from the amount of the gross proceeds used for the computation of
9 the tax, sales of tangible personal property:

10 (a) Not for resale, and when not operated for profit, to a
11 school, hospital, or home for the care and maintenance of chil-
12 dren or aged persons operated by an entity of government, a regu-
13 larly organized church, religious, or fraternal organization, a
14 veterans' organization, or a corporation incorporated under the
15 laws of the state, if the income or benefit from the operation
16 does not inure, in whole or in part, to an individual or private
17 shareholder, directly or indirectly, and if the activities of the
18 entity or agency are carried on exclusively for the benefit of
19 the public at large and are not limited to the advantage, inter-
20 ests, and benefits of its members or any restricted group. At
21 the time of the transfer of this tangible personal property, the
22 transferee shall sign a statement, in a form approved by the
23 department, stating that the property is to be used or consumed
24 in connection with the operation of the institution or agency and
25 that the institution or agency qualifies as an exempt entity
26 under this subdivision. The statement shall be accepted by all
27 courts as prima facie evidence of the exemption and the statement

1 shall provide that if the claim for tax exemption is disallowed
2 the transferee will reimburse the transferor for the amount of
3 tax involved. A sale of tangible personal property to a parent
4 cooperative preschool is exempt from taxation under this act. As
5 used in this subdivision, "parent cooperative preschool" means a
6 nonprofit, nondiscriminatory educational institution, maintained
7 as a community service and administered by parents of children
8 currently enrolled in the preschool, that provides an educational
9 and developmental program for children younger than compulsory
10 school age, that provides an educational program for parents,
11 including active participation with children in preschool activi-
12 ties, that is directed by qualified preschool personnel, and that
13 is licensed by the department of social services pursuant to Act
14 No. 116 of the Public Acts of 1973, ~~as amended,~~ being sections
15 722.111 to 722.128 of the Michigan Compiled Laws.

16 (b) Not for resale to a regularly organized church or house
17 of religious worship, except the following:

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

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

24 (c) To bona fide enrolled students, of food by a school or
25 other educational institution not operated for profit.

1 (d) Affixed to and made a structural part of real estate
2 excepted from the definition of "sale at retail" under section
3 1(1)(c).

4 (e) To persons, of a vessel designated for commercial use of
5 registered tonnage of 500 tons or more, if produced upon special
6 order of the purchaser, and bunker and galley fuel, provisions,
7 supplies, maintenance, and repairs for the exclusive use of the
8 vessel engaged in interstate commerce.

9 (f) To persons engaged in a business enterprise and using or
10 consuming the tangible personal property in the tilling, plant-
11 ing, caring for, or harvesting of the things of the soil; in the
12 breeding, raising, or caring for livestock, poultry, or horticul-
13 tural products, including transfers of livestock, poultry, or
14 horticultural products for further growth; or in the direct gath-
15 ering of fish, by net, line, or otherwise only by an
16 owner-operator of the business enterprise, not including a
17 charter fishing business enterprise. This exemption includes
18 agricultural land tile, which means fired clay or perforated
19 plastic tubing used as part of a subsurface drainage system for
20 land, and subsurface irrigation pipe, if the land tile or irriga-
21 tion pipe is used in the production of agricultural products as a
22 business enterprise. At the time of the transfer of this tangi-
23 ble personal property, the transferee shall sign a statement, in
24 a form approved by the department, stating that the property is
25 to be used or consumed in connection with the production of
26 horticultural or agricultural products as a business enterprise,
27 or in connection with fishing as an owner-operator business

1 enterprise. The statement shall be accepted by all courts as
2 prima facie evidence of the exemption. This exemption includes a
3 portable grain bin, which means a structure that is used or is to
4 be used to shelter grain and that is designed to be disassembled
5 without significant damage to its component parts. This exemp-
6 tion does not include transfers of food, fuel, clothing, or any
7 similar tangible personal property for personal living or human
8 consumption. This exemption does not include tangible personal
9 property permanently affixed and becoming a structural part of
10 real estate.

11 (g) To the following:

12 (i) An industrial processor for use or consumption in indus-
13 trial processing. Property used or consumed in industrial pro-
14 cessing does not include tangible personal property permanently
15 affixed and becoming a structural part of real estate; office
16 furniture, office supplies, and administrative office equipment;
17 or vehicles licensed and titled for use on public highways, other
18 than a specially designed vehicle, together with parts, used to
19 mix and agitate materials added at a plant or jobsite in the con-
20 crete manufacturing process. Industrial processing does not
21 include receiving and storage of raw materials purchased or
22 extracted by the user or consumer; or the preparation of food and
23 beverages by a retailer for retail sale. As used in this subdi-
24 vision, "industrial processor" means a person who transforms,
25 alters, or modifies tangible personal property by changing the
26 form, composition, or character of the property for ultimate sale
27 at retail or sale to another industrial processor to be further

1 processed for ultimate sale at retail. Sales to a person
2 performing a service who does not act as an industrial processor
3 while performing this service shall not be excluded under this
4 subdivision except as provided in subparagraph (ii).

5 (ii) A person, whether or not the person is an industrial
6 processor, if the tangible personal property is a computer used
7 in operating industrial processing equipment; equipment used in a
8 computer assisted manufacturing system; equipment used in a com-
9 puter assisted design or engineering system integral to an indus-
10 trial process; or a subunit or electronic assembly comprising a
11 component in a computer integrated industrial processing system.

12 (h) ~~To persons, of a~~ A copyrighted motion picture film or
13 a newspaper or periodical admitted under federal postal laws and
14 regulations effective September 1, 1985 as second-class mail
15 matter or as a controlled circulation publication or qualified to
16 accept legal notices for publication in this state, as defined by
17 law, or any other newspaper or periodical of general circulation,
18 established not less than 2 years, and published not less than
19 once a week. Tangible personal property used or consumed, and
20 not becoming a component part of a copyrighted motion picture
21 film, newspaper, or periodical, except that portion or percentage
22 of tangible personal property used or consumed in producing an
23 advertising supplement that becomes a component part of a newspa-
24 per or periodical is subject to tax. For purposes of this subdi-
25 vision, tangible personal property that becomes a component part
26 of a newspaper or periodical and consequently not subject to tax
27 includes an advertising supplement inserted into and circulated

1 with a newspaper or periodical that is otherwise exempt from tax
 2 under this subdivision, if the advertising supplement is deliv-
 3 ered directly to the newspaper or periodical by a person other
 4 than the advertiser, or the advertising supplement is printed by
 5 the newspaper or periodical.

6 (i) To persons licensed to operate A commercial OR
 7 EDUCATIONAL radio or television ~~stations~~ BROADCASTING STATION
 8 if the property is PREDOMINANTLY STORED, used, OR CONSUMED in the
 9 origination, ~~or~~ integration, OR BROADCAST of ~~the various~~
 10 ~~sources of~~ RADIO OR TELEVISION program material. ~~for commercial~~
 11 ~~radio or television transmission. This subdivision does not~~
 12 ~~include a vehicle licensed and titled for use on public highways~~
 13 ~~or property used in the transmission to or receiving from an~~
 14 ~~artificial satellite.~~

15 (j) A hearing aid, contact lenses if prescribed for a spe-
 16 cific disease that precludes the use of eyeglasses, or any other
 17 apparatus, device, or equipment used to replace or substitute for
 18 a part of the human body, or used to assist the disabled person
 19 to lead a reasonably normal life if the tangible personal prop-
 20 erty is purchased on a written prescription or order issued by a
 21 ~~licensed~~ health professional as defined by section 21005 of the
 22 public health code, Act No. 368 of the Public Acts of 1978, being
 23 section 333.21005 of the Michigan Compiled Laws, or eyeglasses
 24 prescribed or dispensed to correct the person's vision by an oph-
 25 thalmologist, optometrist, or optician.

26 (k) To persons for use or consumption in the rendition of a
 27 service, the use or consumption of which is taxable under section

1 3a(a) of the use tax act, Act No. 94 of the Public Acts of 1937,
2 ~~as amended,~~ being section 205.93a of the Michigan Compiled
3 Laws, except that this exemption is limited to the tangible per-
4 sonal property located on the premises of the subscriber and the
5 necessary exchange equipment.

6 (l) ~~Not for resale of a~~ A vehicle, NOT FOR RESALE, to a
7 Michigan nonprofit corporation organized exclusively to provide a
8 community with ambulance or fire department services.

9 (m) To inmates in a penal or correctional institution pur-
10 chased with scrip issued and redeemed by the institution.

11 (n) To or for the use of students enrolled in any part of a
12 kindergarten through twelfth grade program, of textbooks sold by
13 a public or nonpublic school.

14 (o) ~~Installed~~ TANGIBLE PERSONAL PROPERTY INSTALLED as a
15 component part of a water pollution control facility for which a
16 tax exemption certificate is issued pursuant to Act No. 222 of
17 the Public Acts of 1966, ~~as amended,~~ being sections 323.351 to
18 323.358 of the Michigan Compiled Laws, or an air pollution con-
19 trol facility for which a tax exemption certificate is issued
20 pursuant to Act No. 250 of the Public Acts of 1965, ~~as amended,~~
21 being sections 336.1 to 336.8 of the Michigan Compiled Laws.

22 (p) To a purchaser of a new motor vehicle purchased before
23 January 1, 1993 if the purchaser qualifies for a special regis-
24 tration under section 226(12) of the Michigan vehicle code, Act
25 No. 300 of the Public Acts of 1949, being section 257.226 of the
26 Michigan Compiled Laws, and the vehicle is purchased through a
27 country determined by the department to be providing a like or

1 complete exemption for the purchase of a new motor vehicle to be
2 removed from that country.