

HOUSE BILL No. 4163

February 8, 2001, Introduced by Reps. Spade, Bovin, Sheltroun, Rich Brown, Wojno, Lipsey, Woodward, Dennis, Kolb, Anderson, Basham, Garcia, Pappageorge, Gielegghem, Schermesser, Rocca, Neumann, Vear and Lemmons and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 1 (MCL 205.51), as amended by 2000 PA 390.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

10 (b) "Sale at retail" means a transaction by which the
11 ownership of tangible personal property is transferred for

1 consideration, if the transfer is made in the ordinary course of
2 the transferor's business and is made to the transferee for con-
3 sumption or use, or for any purpose other than for resale, or for
4 lease, if the rental receipts are taxable under the use tax act,
5 1937 PA 94, MCL 205.91 to 205.111, in the form of tangible per-
6 sonal property to a person licensed under this act, or for demon-
7 stration purposes or lending or leasing to a public or parochial
8 school offering a course in automobile driving. However, a vehi-
9 cle purchased by the school shall be certified for driver educa-
10 tion and shall not be reassigned for personal use of the school's
11 administrative personnel. For a dealer selling a new car or
12 truck, the exemption for demonstration purposes shall be deter-
13 mined by the number of new cars and trucks sold during the cur-
14 rent calendar year or the immediately preceding year without
15 regard to specific make or style in accordance with the following
16 schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20
17 units; 501 or more, 25 units; but not to exceed 25 cars and
18 trucks in a calendar year for demonstration purposes.

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

23 (d) "Sale at retail" includes the sale of electricity, natu-
24 ral or artificial gas, or steam, if the sale is made to the con-
25 sumer or user for consumption or use rather than for resale.
26 Beginning September 20, 1999, sale at retail also includes the
27 sale of the transmission and distribution of electricity, whether

1 the electricity is purchased from the delivering utility or from
2 another provider, if the sale is made to the consumer or user of
3 the electricity for consumption or use rather than for resale.
4 Sale at retail also includes the sale of a prepaid telephone
5 calling card or a prepaid authorization number for telephone use,
6 rather than for resale, and also includes the reauthorization of
7 a prepaid telephone calling card or a prepaid authorization
8 number. Sale at retail does not include the sale of water
9 through water mains or the sale of water delivered in bulk tanks
10 in quantities of not less than 500 gallons.

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

1 (f) "Sale at retail" includes the sale of tangible personal
2 property by an industrial laundry under a sale, rental, or
3 service agreement with a term of at least 5 days.

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

8 (h) "Sale at retail" does not include a commercial advertis-
9 ing element if the commercial advertising element is used to
10 create or develop a print, radio, television, or other advertise-
11 ment, the commercial advertising element is discarded or returned
12 to the provider after the advertising message is completed, and
13 the commercial advertising element is custom developed by the
14 provider for the purchaser. As used in this subdivision,
15 "commercial advertising element" means a negative or positive
16 photographic image, an audiotape or videotape master, a layout, a
17 manuscript, writing of copy, a design, artwork, an illustration,
18 retouching, and mechanical or keyline instructions. Sale at
19 retail includes black and white or full color process separation
20 elements, an audiotape reproduction, or a videotape
21 reproduction.

22 (i) "Gross proceeds" means the amount received in money,
23 credits, subsidies, property, or other money's worth in consider-
24 ation of a sale at retail within this state, without a deduction
25 for the cost of the property sold, the cost of material used, the
26 cost of labor or service purchased, an amount paid for interest
27 or a discount, a tax paid on cigarettes or tobacco products at

1 the time of purchase, a tax paid on beer or liquor at the time of
2 purchase or other expenses. Also, a deduction is not allowed for
3 losses. Gross proceeds do not include an amount received or
4 billed by the taxpayer for remittance to the employee as a gratu-
5 ity or tip, if the gratuity or tip is separately identified and
6 itemized on the guest check or billed to the customer. In a tax-
7 able sale at retail of a motor vehicle, if another motor vehicle
8 is used as part payment of the purchase price, the value of the
9 motor vehicle used as part payment of the purchase price shall be
10 that value agreed to by the parties to the sale as evidenced by
11 the signed statement executed pursuant to section 251 of the
12 Michigan vehicle code, 1949 PA 300, MCL 257.251. IF A MOTOR
13 VEHICLE IS USED AS PART PAYMENT IN A TAXABLE SALE AT RETAIL OF
14 ANOTHER MOTOR VEHICLE, THE GROSS PROCEEDS IS THE DIFFERENCE
15 BETWEEN THE AGREED-UPON VALUE OF THE MOTOR VEHICLE USED AS PART
16 PAYMENT OF THE PURCHASE PRICE AND THE FULL RETAIL PRICE OF THE
17 MOTOR VEHICLE BEING PURCHASED. A credit or refund for returned
18 goods or a refund less an allowance for use made for a motor
19 vehicle returned under 1986 PA 87, MCL 257.1401 to 257.1410, as
20 certified by the manufacturer on a form provided by the depart-
21 ment of treasury, may be deducted.

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

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

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

9 (o) "Textiles" means goods that are made of or incorporate
10 woven or nonwoven fabric, including, but not limited to, cloth-
11 ing, shoes, hats, gloves, handkerchiefs, curtains, towels,
12 sheets, pillows, pillow cases, tablecloths, napkins, aprons,
13 linens, floor mops, floor mats, and thread. Textiles also
14 include materials used to repair or construct textiles, or other
15 goods used in the rental, sale, or cleaning of textiles.

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