

HOUSE BILL No. 4027

January 28, 2003, Introduced by Rep. Bisbee 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,
and by adding section 11.

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,
4 municipal or private corporation whether organized for profit or
5 not, company, estate, trust, receiver, trustee, syndicate, the
6 United States, this state, county, or any other group or
7 combination acting as a unit, and includes the plural as well as
8 the singular number, unless the intention to give a more limited
9 meaning is disclosed by the context.

10 (b) "Sale at retail" means a transaction by which the

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

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

24 (d) "Sale at retail" includes the sale of electricity,
25 natural or artificial gas, or steam, if the sale is made to the
26 consumer or user for consumption or use rather than for resale.
27 Beginning September 20, 1999, sale at retail also includes the

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

12 (e) "Sale at retail" includes computer software offered for
13 general sale to the public or software modified or adapted to the
14 user's needs or equipment by the seller, only if the software is
15 available for sale from a seller of software on an as is basis or
16 as an end product without modification or adaptation. Sale at
17 retail does not include specific charges for technical support or
18 for adapting or modifying prewritten, standard, or canned
19 computer software programs to a purchaser's needs or equipment if
20 those charges are separately stated and identified. Sale at
21 retail does not include computer software originally designed for
22 the exclusive use and special needs of the purchaser. As used in
23 this subdivision, "computer software" means a set of statements
24 or instructions that when incorporated in a machine usable medium
25 is capable of causing a machine or device having information
26 processing capabilities to indicate, perform, or achieve a
27 particular 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 transaction
5 by a person not licensed or required to be licensed under this
6 act, in which tangible personal property is offered for sale,
7 sold, transferred, and delivered by the owner.

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

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

1 products at the time of purchase, a tax paid on beer or liquor at
2 the time of purchase or other expenses, **but with a deduction for**
3 **the amount of any federal gasoline tax paid on gasoline at the**
4 **time of purchase.** Also, a deduction is not allowed for losses.
5 Gross proceeds do not include an amount received or billed by the
6 taxpayer for remittance to the employee as a gratuity or tip, if
7 the gratuity or tip is separately identified and itemized on the
8 guest check or billed to the customer. In a taxable sale at
9 retail of a motor vehicle, if another motor vehicle is used as
10 part payment of the purchase price, the value of the motor
11 vehicle used as part payment of the purchase price shall be that
12 value agreed to by the parties to the sale as evidenced by the
13 signed statement executed pursuant to section 251 of the Michigan
14 vehicle code, 1949 PA 300, MCL 257.251. A credit or refund for
15 returned goods or a refund less an allowance for use made for a
16 motor vehicle returned under 1986 PA 87, MCL 257.1401 to
17 257.1410, as certified by the manufacturer on a form provided by
18 the department of treasury, may be deducted.

19 (j) "Business" includes an activity engaged in by a person or
20 caused to be engaged in by that person with the object of gain,
21 benefit, or advantage, either direct or indirect.

22 (k) "Tax year" or "taxable year" means the fiscal year of the
23 state or the taxpayer's fiscal year if permission is obtained by
24 the taxpayer from the department to use the taxpayer's fiscal
25 year as the tax period instead.

26 (l) "Department" means the revenue division of the department
27 of treasury.

1 (m) "Taxpayer" means a person subject to a tax under this
2 act.

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

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

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

24 **Sec. 11. Each year the state treasurer shall estimate the**
25 **amount of sales tax that was not collected because of the**
26 **deduction from gross proceeds of the amount of any federal**
27 **gasoline tax paid on gasoline at the time of purchase under**

1 section 1(1)(i), and that amount shall be transferred from the
2 general fund to the state school aid fund.