

HOUSE BILL No. 4138

January 26, 2011, Introduced by Rep. Scott 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 2008 PA 438.

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" or "retail sale" means a sale, lease, or

1 rental of tangible personal property for any purpose other than for
2 resale, sublease, or subrent.

3 (c) "Gross proceeds" means sales price.

4 (d) "Sales price" means the total amount of consideration,
5 including cash, credit, property, and services, for which tangible
6 personal property or services are sold, leased, or rented, valued
7 in money, whether received in money or otherwise, and applies to
8 the measure subject to sales tax. Sales price includes the
9 following subparagraphs (i) through (vii) and excludes subparagraphs
10 (viii) through ~~(x)~~-(xiv) :

11 (i) Seller's cost of the property sold.

12 (ii) Cost of materials used, labor or service cost, interest,
13 losses, costs of transportation to the seller, taxes imposed on the
14 seller other than taxes imposed by this act, and any other expense
15 of the seller.

16 (iii) Charges by the seller for any services necessary to
17 complete the sale, other than the following:

18 (A) An amount received or billed by the taxpayer for
19 remittance to the employee as a gratuity or tip, if the gratuity or
20 tip is separately identified and itemized on the guest check or
21 billed to the customer.

22 (B) Labor or service charges involved in maintenance and
23 repair work on tangible personal property of others if separately
24 itemized.

25 (iv) Delivery charges incurred or to be incurred before the
26 completion of the transfer of ownership of tangible personal
27 property subject to the tax levied under this act from the seller

1 to the purchaser. A seller is not liable under this act for
2 delivery charges allocated to the delivery of exempt property.

3 (v) Installation charges incurred or to be incurred before the
4 completion of the transfer of ownership of tangible personal
5 property from the seller to the purchaser.

6 (vi) ~~Credit~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (xi),**
7 **(xii), (xiii), AND (xiv), CREDIT** for any trade-in.

8 (vii) Except as otherwise provided in subparagraph (x),
9 consideration received by the seller from third parties if all of
10 the following conditions are met:

11 (A) The seller actually receives consideration from a party
12 other than the purchaser and the consideration is directly related
13 to a price reduction or discount on the sale.

14 (B) The seller has an obligation to pass the price reduction
15 or discount through to the purchaser.

16 (C) The amount of the consideration attributable to the sale
17 is fixed and determinable by the seller at the time of the sale of
18 the item to the purchaser.

19 (D) One of the following criteria is met:

20 (I) The purchaser presents a coupon, certificate, or other
21 documentation to the seller to claim a price reduction or discount
22 where the coupon, certificate, or documentation is authorized,
23 distributed, or granted by a third party with the understanding
24 that the third party will reimburse any seller to whom the coupon,
25 certificate, or documentation is presented.

26 (II) The purchaser identifies himself or herself to the seller
27 as a member of a group or organization entitled to a price

1 reduction or discount. A preferred customer card that is available
2 to any patron does not constitute membership in a group or
3 organization.

4 (III) The price reduction or discount is identified as a third
5 party price reduction or discount on the invoice received by the
6 purchaser or on a coupon, certificate, or other documentation
7 presented by the purchaser.

8 (viii) Interest, financing, or carrying charges from credit
9 extended on the sale of personal property or services, if the
10 amount is separately stated on the invoice, bill of sale, or
11 similar document given to the purchaser.

12 (ix) Any taxes legally imposed directly on the consumer that
13 are separately stated on the invoice, bill of sale, or similar
14 document given to the purchaser.

15 (x) Beginning January 1, 2000, employee discounts that are
16 reimbursed by a third party on sales of motor vehicles.

17 (xi) **THE AGREED-UPON VALUE OF A TITLED WATERCRAFT USED AS PART**
18 **PAYMENT OF THE PURCHASE PRICE OF A NEW TITLED WATERCRAFT OR USED**
19 **TITLED WATERCRAFT IF THE AGREED-UPON VALUE IS SEPARATELY STATED ON**
20 **THE INVOICE, BILL OF SALE, OR SIMILAR DOCUMENT GIVEN TO THE**
21 **PURCHASER.**

22 (xii) **THE AGREED-UPON VALUE OF A MOTOR VEHICLE OR TRAILER COACH**
23 **USED AS PART PAYMENT OF THE PURCHASE PRICE OF A NEW OR USED MOTOR**
24 **VEHICLE OR TRAILER COACH IF THE AGREED-UPON VALUE IS SEPARATELY**
25 **STATED ON THE INVOICE, BILL OF SALE, OR SIMILAR DOCUMENT GIVEN TO**
26 **THE PURCHASER. AS USED IN THIS SUBPARAGRAPH, "NEW MOTOR VEHICLE"**
27 **MEANS THAT TERM AS DEFINED IN SECTION 33A OF THE MICHIGAN VEHICLE**

1 CODE, 1949 PA 300, MCL 257.33A.

2 (xiii) THE AGREED-UPON VALUE OF A PIECE OF HEAVY EARTH MOVING
3 EQUIPMENT USED AS PART PAYMENT OF THE PURCHASE PRICE OF A NEW OR
4 USED PIECE OF HEAVY EARTH MOVING EQUIPMENT IF THE AGREED-UPON VALUE
5 IS SEPARATELY STATED ON THE INVOICE, BILL OF SALE, OR SIMILAR
6 DOCUMENT GIVEN TO THE PURCHASER. AS USED IN THIS SUBPARAGRAPH,
7 "HEAVY EARTH MOVING EQUIPMENT" MEANS INDUSTRIAL CONSTRUCTION
8 EQUIPMENT THAT MEETS ALL OF THE FOLLOWING CRITERIA:

9 (A) IS SELF-PROPELLED.

10 (B) WEIGHS 10,000 POUNDS OR MORE.

11 (C) IS DESIGNED AND PRINCIPALLY INTENDED TO MOVE, TRANSPORT,
12 OR RECONFIGURE DIRT, EARTH, SOIL, OR OTHER CONSTRUCTION MATERIAL AT
13 A CONSTRUCTION SITE.

14 (xiv) THE AGREED-UPON VALUE OF A TITLED SNOWMOBILE USED AS PART
15 PAYMENT OF THE PURCHASE PRICE OF A NEW SNOWMOBILE OR USED
16 SNOWMOBILE IF THE AGREED-UPON VALUE IS SEPARATELY STATED ON THE
17 INVOICE, BILL OF SALE, OR SIMILAR DOCUMENT GIVEN TO THE PURCHASER.

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

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

25 (g) "Department" means the department of treasury.

26 (h) "Taxpayer" means a person subject to a tax under this act.

27 (i) "Tax" includes a tax, interest, or penalty levied under

1 this act.

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

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