

**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Reps. Outman, Tisdell, Cavitt, Hall and Schuette

ENROLLED HOUSE BILL No. 4039

AN ACT to amend 1933 PA 167, entitled “An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act,” by amending sections 1 and 25 (MCL 205.51 and 205.75), section 1 as amended by 2018 PA 2 and section 25 as amended by 2021 PA 108.

The People of the State of Michigan enact:

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

(a) “Person” means an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether organized for profit or not, company, limited liability company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and includes the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) “Sale at retail” or “retail sale” means a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent.

(c) “Gross proceeds” means sales price.

(d) “Sales price” means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sales tax. Sales price includes the following subparagraphs (i) to (vii) and excludes subparagraphs (viii) to (xv):

(i) Seller’s cost of the property sold.

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

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

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

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

(iv) Except as otherwise provided in subparagraph (xv), delivery charges. A seller is not liable under this act for delivery charges allocated to the delivery of exempt property.

(v) Except as otherwise provided in subparagraph (xv), installation charges.

(vi) Except as otherwise provided in subparagraphs (xi), (xii), and (xiv), credit for any trade-in.

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

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

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

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

(D) One of the following criteria is met:

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

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in a group or organization.

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

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

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

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

(xi) Beginning November 15, 2013, credit for the agreed-upon value of a titled watercraft used as part payment of the purchase price of a new titled watercraft or used titled watercraft purchased from a watercraft dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(xii) Beginning December 15, 2013, credit for the agreed-upon value of a motor vehicle or recreational vehicle used as part payment of the purchase price of a new motor vehicle or used motor vehicle or recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals. Except as otherwise provided under subparagraph (xiv), for purposes of this subparagraph, the agreed-upon value of a motor vehicle or recreational vehicle used as part payment is limited as follows:

(A) Beginning December 15, 2013, subject to sub-subparagraphs (B) and (C), the lesser of the following:

(I) \$2,000.00.

(II) The agreed-upon value of the motor vehicle or recreational vehicle used as part payment.

(B) Beginning January 1, 2015 and each January 1 thereafter through December 31, 2018, the amount under sub-subparagraph (A)(I) is increased by an additional \$500.00 each year.

(C) Beginning January 1, 2019, subject to sub-subparagraphs (D) and (E), the lesser of the following:

(I) \$5,000.00.

(II) The agreed-upon value of the motor vehicle used as part payment.

(D) Beginning January 1, 2020 and each January 1 thereafter, the amount under sub-subparagraph (C)(I) is increased by an additional \$1,000.00 each year.

(E) Beginning on January 1 in the year in which the amount under sub-subparagraph (C)(I) exceeds \$14,000.00 and each January 1 thereafter, there is no limitation on the agreed-upon value of the motor vehicle used as part payment.

(xiii) Beginning January 1, 2017, credit for the core charge attributable to a recycling fee, deposit, or disposal fee for a motor vehicle or recreational vehicle part or battery if the recycling fee, deposit, or disposal fee is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(xiv) Beginning January 1, 2018, credit for the agreed-upon value of a recreational vehicle used as part payment of the purchase price of a recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(xv) Delivery or installation charges if such charges are separately stated on the invoice, bill of sale, or similar document provided to the purchaser, and the seller maintains its books and records to show separately the transactions used to determine the tax levied by this act. This subdivision does not apply to delivery or installation charges involving or relating to the sale of electricity, natural gas, or artificial gas by a utility.

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

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

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

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

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

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

(k) "New motor vehicle" means that term as defined in section 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

(l) "Recreational vehicle" means that term as defined in section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

(m) "Dealer" means that term as defined in section 11 of the Michigan vehicle code, 1949 PA 300, MCL 257.11.

(n) "Watercraft dealer" means a dealer as that term is defined in section 80102 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80102.

(o) "Utility" means either of the following:

(i) A person regulated by the Michigan public service commission as a utility.

(ii) A person that operates equipment or facilities for producing, generating, transmitting, delivering, or furnishing electricity within this state for the public for compensation, regardless of the person's owner, ownership structure, or regulation by the Michigan public service commission.

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

(3) Notwithstanding anything to the contrary in this act, the following applies only to delivery and installation charges described in subsection (1)(d)(iv) or (v), except that this subsection does not apply to delivery and installation charges involving or relating to the sale of electricity, natural gas, or artificial gas by a utility:

(a) Not later than 90 days after the effective date of the amendatory act that added this subsection, the department shall cancel all outstanding balances related to such delivery and installation charges on notices of intent to assess that were issued under section 21 of 1941 PA 122, MCL 205.21, for the tax levied under this act and that were issued before the effective date of the amendatory act that added this subsection.

(b) Not later than 90 days after the effective date of the amendatory act that added this subsection, the department shall cancel all outstanding balances related to such delivery and installation charges on final assessments that were issued under section 22 of 1941 PA 122, MCL 205.22, for the tax levied under this act, and that were issued before the effective date of the amendatory act that added this subsection.

(c) After the effective date of the amendatory act that added this subsection, the department shall not issue any new assessments for the tax levied under this act on such delivery and installation charges for any tax period before the effective date of the amendatory act that added this subsection that is open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.

Sec. 25. (1) All money received and collected under this act must be deposited by the department in the state treasury to the credit of the general fund, except as otherwise provided in this section.

(2) Fifteen percent of the collections of the tax imposed at a rate of 4% must be distributed to cities, villages, and townships pursuant to the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921.

(3) Sixty percent of the collections of the tax imposed at a rate of 4% must be deposited in the state school aid fund and distributed as provided by law. In addition, all of the collections of the tax imposed at the additional rate of 2% approved by the electors on March 15, 1994 must be deposited in the state school aid fund.

(4) Except as otherwise provided in this subsection, not less than 27.9% of 25% of the collections of the general sales tax imposed at a rate of 4% directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, and on the sale of the parts and accessories of motor vehicles by new and used car businesses, used car businesses, accessory dealer businesses, and gasoline station businesses as classified by the department must be deposited each year into the comprehensive transportation fund. For the fiscal year ending September 30, 2021 only, the amount deposited into the comprehensive transportation fund under this subsection must be reduced by \$18,000,000.00 and that \$18,000,000.00 must be deposited into the transportation administration collection fund.

(5) Beginning October 1, 2016 and the first day of each calendar quarter thereafter, an amount equal to the collections for the calendar quarter that is 2 calendar quarters immediately preceding the current calendar quarter of the tax imposed under this act at the additional rate of 2% approved by the electors on March 15, 1994 from the sale at retail of aviation fuel must be distributed as follows:

(a) An amount equal to 35% of the collections of the tax imposed at a rate of 2% on the sale at retail of aviation fuel must be deposited in the state aeronautics fund and must be expended, on appropriation, only for those purposes authorized in the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208.

(b) An amount equal to 65% of the collections of the tax imposed at a rate of 2% on the sale at retail of aviation fuel must be deposited in the qualified airport fund and must be expended, on appropriation, only for those purposes authorized under section 35 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.35.

(6) The department shall, on an annual basis, reconcile the amounts distributed under subsection (5) during each fiscal year with the amounts actually collected for a particular fiscal year and shall make any necessary adjustments, positive or negative, to the amounts to be distributed for the next successive calendar quarter that begins January 1. The state treasurer or the state treasurer's designee shall annually provide to the operator of each qualified airport a report of the reconciliation performed under this subsection. The reconciliation report is subject to the confidentiality restrictions and penalties provided in section 28(1)(f) of 1941 PA 122, MCL 205.28.

(7) An amount equal to the collections of the tax imposed at a rate of 4% under this act from the sale at retail of computer software must be deposited in the Michigan health initiative fund created in section 5911 of the public health code, 1978 PA 368, MCL 333.5911, and must be considered in addition to, and is not intended as a replacement for any other money appropriated to the department of health and human services. The funds deposited in the Michigan health initiative fund on an annual basis must not be less than \$9,000,000.00 or more than \$12,000,000.00.

(8) In addition to the money deposited in the state school aid fund under subsection (3), an amount equal to the sum of the following, as determined by the department, must be deposited into the state school aid fund:

(a) All revenue lost to the state school aid fund as a result of the exemption under section 4a(1)(u).

(b) All revenue lost to the state school aid fund as a result of the exemption under section 4ee. A person that claims an exemption under section 4ee shall report the sales price of the data center equipment as defined in section 4ee and any other information necessary to determine the amount of revenue lost to the state school aid fund as a result of the exemption under section 4ee annually on a form at the time and in a manner prescribed by the department. The report required under this subdivision must not include any remittance for tax, and does not constitute a return or otherwise alleviate any obligations under section 6.

(c) All revenue lost to the state school aid fund as a result of the exclusion under section 1(1)(d)(xv).

(9) The balance in the state general fund shall be disbursed only on an appropriation or appropriations by the legislature.

(10) As used in this section:

(a) "Aviation fuel" means fuel as that term is defined in section 4 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.4.

(b) "Comprehensive transportation fund" means the comprehensive transportation fund created in section 10b of 1951 PA 51, MCL 247.660b.

(c) "Qualified airport" means that term as defined in section 109 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.109.


(d) "Qualified airport fund" means the qualified airport fund created in section 34(2) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

(e) "State aeronautics fund" means the state aeronautics fund created in section 34(1) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

(f) "State school aid fund" means the state school aid fund established in section 11 of article IX of the state constitution of 1963.

(g) "Transportation administration collection fund" means the transportation administration collection fund created in section 810b of the Michigan vehicle code, 1949 PA 300, MCL 257.810b.

This act is ordered to take immediate effect.


Clerk of the House of Representatives


Secretary of the Senate

Approved _____

Governor