

HOUSE BILL No. 5044

September 20, 1989, Introduced by Rep. Bryant and referred to the Committee on Taxation.

A bill to amend section 1 of Act No. 167 of the Public Acts of 1933, entitled as amended

"General sales tax act,"

as amended by Act No. 259 of the Public Acts of 1987, being section 205.51 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1 of Act No. 167 of the Public Acts of
2 1933, as amended by Act No. 259 of the Public Acts of 1987, being
3 section 205.51 of the Michigan Compiled Laws, is amended to read
4 as follows:

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

6 (a) "Person" means an individual, firm, partnership, joint
7 venture, association, social club, fraternal organization,
8 municipal or private corporation, whether organized for profit or
9 not, company, estate, trust, receiver, trustee, syndicate, the

1 United States, this state, county, or any other group or
2 combination acting as a unit, and includes the plural as well as
3 the singular number, unless the intention to give a more limited
4 meaning is disclosed by the context.

5 (b) "Sale at retail" means a transaction by which the owner-
6 ship of tangible personal property is transferred for considera-
7 tion, if the transfer is made in the ordinary course of the
8 transferor's business and is made to the transferee for consump-
9 tion or use, or for any purpose other than for resale, or for
10 lease, when the rental receipts are taxable under the use tax
11 act, Act No. 94 of the Public Acts of 1937, as amended, being
12 sections 205.91 to 205.111 of the Michigan Compiled Laws, in the
13 form of tangible personal property to a person licensed under
14 this act, or demonstration purposes or lending or leasing to a
15 public or parochial school offering a course in automobile driv-
16 ing, except that a vehicle purchased by the school shall be cer-
17 tified for driver education and shall not be reassigned for per-
18 sonal use of the school's administrative personnel. For a dealer
19 selling a new car or truck, the exemption for demonstration pur-
20 poses shall be determined by the number of new cars and trucks
21 sold during the current calendar year or the immediate prior year
22 without regard to specific make or style in accordance with the
23 following schedule: 0 to 25, 2 units; 26 to 100, 7 units; 101 to
24 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars
25 and trucks in a calendar year for demonstration purposes.

26 (c) "Sale at retail" includes the sale of tangible personal
27 property to persons directly engaged in the business of

1 constructing, altering, repairing, or improving real estate for
2 others except property affixed to and made a structural part of
3 the real estate of a nonprofit hospital or nonprofit housing. A
4 nonprofit hospital or nonprofit housing includes only the prop-
5 erty of a nonprofit hospital or the homes or dwelling places con-
6 structed by a nonprofit housing entity qualified as exempt pursu-
7 ant to section 15a of the state housing development authority act
8 of 1966, Act No. 346 of the Public Acts of 1966, as amended,
9 being section 125.1415a of the Michigan Compiled Laws, the income
10 or property of which does not directly or indirectly inure to the
11 benefit of an individual, private stockholder, or other private
12 person.

13 (d) "Sale at retail" includes a conditional sale, install-
14 ment lease sale, and other transfer of property when title is
15 retained as security for the purchase price but is intended to be
16 transferred later.

17 (e) "Sale at retail" includes the sale of electricity, natu-
18 ral or artificial gas, or steam when made to the consumer or user
19 for consumption or use rather than for resale. Sale at retail
20 does not include the sale of water through water mains or the
21 sale of water delivered in bulk tanks in quantities of not less
22 than 500 gallons.

23 (f) "Sale at retail" includes computer software offered for
24 general sale to the public or software modified or adapted to the
25 user's needs or equipment by the seller, only if the software is
26 available for sale from a seller of software on an as is basis or
27 as an end product without modification or adaptation. Sale at

1 retail does not include specific charges for technical support or
2 for adapting or modifying prewritten, standard, or canned com-
3 puter software programs to a purchaser's needs or equipment if
4 those charges are separately stated and identified. Sale at
5 retail does not include computer software originally designed for
6 the exclusive use and special needs of the purchaser. As used in
7 this subdivision, "computer software" means a set of statements
8 or instructions that when incorporated in a machine usable medium
9 is capable of causing a machine or device having information pro-
10 cessing capabilities to indicate, perform, or achieve a particu-
11 lar function, task, or result.

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

16 (h) "Gross proceeds" means the amount received in money,
17 credits, subsidies, property, or other money's worth in consider-
18 ation of a sale at retail within this state, without a deduction
19 for the cost of the property sold, the cost of material used, the
20 cost of labor or service purchased, an amount paid for interest
21 or a discount, a tax paid on beer or liquor at time of purchase
22 or other expenses. Also, a deduction is not allowed for losses.
23 Gross proceeds does not include an amount received or billed by
24 the taxpayer for remittance to the employee as a gratuity or tip,
25 if the gratuity or tip is separately identified and itemized on
26 the guest check or billed to the customer. In a taxable sale at
27 retail of a motor vehicle, if another motor vehicle is used as

1 part payment of the purchase price, the value of the motor
2 vehicle used as part payment of the purchase price shall be that
3 value agreed to by the parties to the sale as evidenced by the
4 signed statement executed pursuant to section 251 of Act No. 300
5 of the Public Acts of 1949, as amended, being section 257.251 of
6 the Michigan Compiled Laws. For a sale at retail of a motor
7 vehicle or trailer coach with a transfer of a used motor vehicle
8 or trailer coach, for a sale at retail of a titled watercraft
9 with a transfer of a used titled watercraft, or for a sale at
10 retail of an aircraft with a transfer of a used aircraft made on
11 or after March 14, 1984, and on or before February 1, 1985, the
12 gross proceeds attributable to the sale at retail shall equal 30%
13 of the value of the used motor vehicle, used trailer coach, used
14 aircraft, or used titled watercraft used as part payment of the
15 purchase price, or 30% of the value of a motor vehicle as repre-
16 sented by an unexpired certificate issued pursuant to sections 7
17 or 7a that is presented in connection with the sale at retail of
18 a motor vehicle or trailer coach, subtracted from the full retail
19 price of the motor vehicle, trailer coach, aircraft, or titled
20 watercraft being purchased. A credit or refund for returned
21 goods may be deducted.

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

5 (l) "Taxpayer" means a person subject to a tax under this
6 act. TAXPAYER INCLUDES A PERSON ENGAGED IN THE REGULAR AND SYS-
7 TEMATIC SOLICITATION OF ORDERS FOR TANGIBLE PERSONAL PROPERTY BY
8 MAIL IF THE PERSON BENEFITS FROM ANY BANKING, FINANCING, DEBT
9 COLLECTION, TELECOMMUNICATION, OR MARKETING ACTIVITIES OCCURRING
10 IN THIS STATE OR BENEFITS FROM THE LOCATION IN THIS STATE OF
11 AUTHORIZED INSTALLATION, SERVICING, OR REPAIR FACILITIES.

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

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