

HOUSE BILL NO. 5080

June 22, 2021, Introduced by Reps. Outman, Coleman and Hall and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled "General sales tax 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 2020 PA 29.

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

1 not, company, estate, trust, receiver, trustee, syndicate, the
2 United States, this state, county, or any other group or
3 combination acting as a unit, and includes the plural as well as
4 the singular number, unless the intention to give a more limited
5 meaning is disclosed by the context.

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

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

10 (d) "Sales price" means the total amount of consideration,
11 including cash, credit, property, and services, for which tangible
12 personal property or services are sold, leased, or rented, valued
13 in money, whether received in money or otherwise, and applies to
14 the measure subject to sales tax. Sales price includes the
15 following subparagraphs (i) ~~through~~ to (vii) and excludes
16 subparagraphs (viii) ~~through~~ (xiv) ~~to~~ (xv):

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

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

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

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

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

1 itemized.

2 (iv) ~~Delivery~~ **Except as otherwise provided in subparagraph**
3 **(xv), delivery** charges incurred or to be incurred before the
4 completion of the transfer of ownership of tangible personal
5 property subject to the tax levied under this act from the seller
6 to the purchaser. A seller is not liable under this act for
7 delivery charges allocated to the delivery of exempt property.

8 (v) ~~Installation~~ **Except as otherwise provided in subparagraph**
9 **(xv), installation** charges incurred or to be incurred before the
10 completion of the transfer of ownership of tangible personal
11 property from the seller to the purchaser.

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

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

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

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

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

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

26 (I) The purchaser presents a coupon, certificate, or other
27 documentation to the seller to claim a price reduction or discount
28 where the coupon, certificate, or documentation is authorized,
29 distributed, or granted by a third party with the understanding

1 that the third party will reimburse any seller to whom the coupon,
2 certificate, or documentation is presented.

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

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

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

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

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

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

28 (xii) Beginning December 15, 2013, credit for the agreed-upon
29 value of a motor vehicle or recreational vehicle used as part

1 payment of the purchase price of a new motor vehicle or used motor
2 vehicle or recreational vehicle purchased from a dealer if the
3 agreed-upon value is separately stated on the invoice, bill of
4 sale, or similar document given to the purchaser. This subparagraph
5 does not apply to leases or rentals. Except as otherwise provided
6 under subparagraph (xiv), for purposes of this subparagraph, the
7 agreed-upon value of a motor vehicle or recreational vehicle used
8 as part payment ~~shall be~~**is** limited as follows:

9 (A) Beginning December 15, 2013, subject to sub-subparagraphs

10 (B) and (C), the lesser of the following:

11 (I) \$2,000.00.

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

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

17 (C) Beginning January 1, 2019, subject to sub-subparagraphs

18 (D) and (E), the lesser of the following:

19 (I) \$5,000.00.

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

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

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

29 (xiii) Beginning January 1, 2017, credit for the core charge

1 attributable to a recycling fee, deposit, or disposal fee for a
2 motor vehicle or recreational vehicle part or battery if the
3 recycling fee, deposit, or disposal fee is separately stated on the
4 invoice, bill of sale, or similar document given to the purchaser.

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

11 (xv) **Delivery or installation charges if the charges are**
12 **separately stated on the invoice, bill of sale, or similar document**
13 **given to the purchaser.**

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

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

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

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

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

25 (j) "Textiles" means goods that are made of or incorporate
26 woven or nonwoven fabric, including, but not limited to, clothing,
27 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,
28 pillows, pillow cases, tablecloths, napkins, aprons, linens, floor
29 mops, floor mats, and thread. Textiles also include materials used

1 to repair or construct textiles, or other goods used in the rental,
2 sale, or cleaning of textiles.

3 (k) "New motor vehicle" means that term as defined in section
4 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

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

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

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

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 the
17 unlicensed person obtains the tangible personal property sold by
18 the unlicensed person, irrespective of whether the unlicensed
19 person is making sales on the unlicensed person's own behalf or on
20 behalf of the dealer, distributor, supervisor, or employer, the
21 department may so regard the unlicensed person and may regard the
22 dealer, distributor, supervisor, or employer as making sales at
23 retail at the retail price for the purposes of this act.

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

28 (2) Fifteen percent of the collections of the tax imposed at a
29 rate of 4% must be distributed to cities, villages, and townships

1 pursuant to the Glenn Steil state revenue sharing act of 1971, 1971
2 PA 140, MCL 141.901 to 141.921.

3 (3) Sixty percent of the collections of the tax imposed at a
4 rate of 4% must be deposited in the state school aid fund
5 ~~established in section 11 of article IX of the state constitution~~
6 ~~of 1963~~ and distributed as provided by law. In addition, all of the
7 collections of the tax imposed at the additional rate of 2%
8 approved by the electors on March 15, 1994 must be deposited in the
9 state school aid fund.

10 (4) Not less than 27.9% of 25% of the collections of the
11 general sales tax imposed at a rate of 4% directly or indirectly on
12 fuels sold to propel motor vehicles upon highways, on the sale of
13 motor vehicles, and on the sale of the parts and accessories of
14 motor vehicles by new and used car businesses, used car businesses,
15 accessory dealer businesses, and gasoline station businesses as
16 classified by the department must be deposited each year into the
17 comprehensive transportation fund created in section 10b of 1951 PA
18 51, MCL 247.660b.

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

26 (a) An amount equal to 35% of the collections of the tax
27 imposed at a rate of 2% on the sale at retail of aviation fuel must
28 be deposited in the state aeronautics fund and must be expended, on
29 appropriation, only for those purposes authorized in the

1 aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1
2 to 259.208.

3 (b) An amount equal to 65% of the collections of the tax
4 imposed at a rate of 2% on the sale at retail of aviation fuel must
5 be deposited in the qualified airport fund and must be expended, on
6 appropriation, only for those purposes authorized under section 35
7 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL
8 259.35.

9 (6) The department shall, on an annual basis, reconcile the
10 amounts distributed under subsection (5) during each fiscal year
11 with the amounts actually collected for a particular fiscal year
12 and shall make any necessary adjustments, positive or negative, to
13 the amounts to be distributed for the next successive calendar
14 quarter that begins January 1. The state treasurer or his or her
15 designee shall annually provide to the operator of each qualified
16 airport a report of the reconciliation performed under this
17 subsection. The reconciliation report is subject to the
18 confidentiality restrictions and penalties provided in section
19 28(1)(f) of 1941 PA 122, MCL 205.28.

20 (7) An amount equal to the collections of the tax imposed at a
21 rate of 4% under this act from the sale at retail of computer
22 software must be deposited in the Michigan health initiative fund
23 created in section 5911 of the public health code, 1978 PA 368, MCL
24 333.5911, and must be considered in addition to, and is not
25 intended as a replacement for any other money appropriated to the
26 department of health and human services. The funds deposited in the
27 Michigan health initiative fund on an annual basis must not be less
28 than \$9,000,000.00 or more than \$12,000,000.00.

29 (8) ~~An~~ **In addition to the money deposited in the state school**

1 **aid fund under subsection (3), an** amount equal to ~~all revenue lost~~
 2 ~~to the state school aid fund as a result of the exemption under~~
 3 ~~section 4ee, the sum of the following,~~ as determined by the
 4 department, must be deposited into the state school aid fund:
 5 ~~established in section 11 of article IX of the state constitution~~
 6 ~~of 1963. Money deposited into the state school aid fund under this~~
 7 ~~subsection must not include and must be considered in addition to~~
 8 ~~money deposited in the state school aid fund under subsection (3).~~

9 **(a) All revenue lost to the state school aid fund as a result**
 10 **of the exemption under section 4ee.** A person that claims an
 11 exemption under section 4ee shall report the sales price of the
 12 data center equipment as defined in section 4ee and any other
 13 information necessary to determine the amount of revenue lost to
 14 the **state** school aid fund as a result of the exemption under
 15 section 4ee annually on a form at the time and in a manner
 16 prescribed by the department. ~~The~~

17 **(b) All revenue lost to the state school aid fund as a result**
 18 **of the exclusion under section 1(1)(d)(xv).** A person that excludes
 19 **delivery or installation charges from the sales price of tangible**
 20 **personal property under section 1(1)(d)(xv) for purposes of**
 21 **calculating the tax due under this act shall report the amount of**
 22 **the delivery or installation charges and any other information**
 23 **necessary to determine the amount of revenue lost to the state**
 24 **school aid fund as a result of the exclusion under section**
 25 **1(1)(d)(xv) annually on a form at the time and in a manner**
 26 **prescribed by the department.**

27 **(9) A** report required under ~~this subsection shall~~ **(8) must** not
 28 include any remittance for tax, and does not constitute a return or
 29 otherwise alleviate any obligations under section 6.

1 **(10)** ~~(9)~~—The balance in the state general fund shall be
2 disbursed only on an appropriation or appropriations by the
3 legislature.

4 **(11)** ~~(10)~~—As used in this section:

5 (a) "Aviation fuel" means fuel as that term is defined in
6 section 4 of the aeronautics code of the state of Michigan, 1945 PA
7 327, MCL 259.4.

8 (b) "Qualified airport" means that term as defined in section
9 109 of the aeronautics code of the state of Michigan, 1945 PA 327,
10 MCL 259.109.

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

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

17 **(e) "State school aid fund" means the state school aid fund**
18 **established in section 11 of article IX of the state constitution**
19 **of 1963.**

20 Enacting section 1. Section 1(1)(d)(xv) of the general sales
21 tax act, 1933 PA 167, MCL 205.51, is intended only to clarify the
22 current status of the law in this state, is remedial in nature,
23 and, therefore, applies to a civil action pending on the effective
24 date of this amendatory act.