



HOUSE BILL No. 5810

April 25, 1996, Introduced by Reps. Dalman, DeLange, Gernaat, Whyman, Goschka, Wallace, Horton, Profit, Pitoniak, Palamara, Jaye, Griffin, Wetters, Cropsey, Kukuk, McManus and Perricone and referred to the Committee on Tax Policy.

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. 209 of the Public Acts of 1995, 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. 209 of the Public Acts of 1995, 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
9 or 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, if the rental receipts are taxable under the use tax act,
11 Act No. 94 of the Public Acts of 1937, being sections 205.91 to
12 205.111 of the Michigan Compiled Laws, in the form of tangible
13 personal property to a person licensed under this act, or for
14 demonstration purposes or lending or leasing to a public or paro-
15 chial school offering a course in automobile driving. However, a
16 vehicle purchased by the school shall be certified for driver
17 education and shall not be reassigned for personal use of the
18 school's administrative personnel. For a dealer selling a new
19 car or truck, the exemption for demonstration purposes shall be
20 determined by the number of new cars and trucks sold during the
21 current calendar year or the immediately preceding year without
22 regard to specific make or style in accordance with the following
23 schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20
24 units; 501 or more, 25 units; but not to exceed 25 cars and
25 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 REGULARLY ORGANIZED CHURCH OR HOUSE OF RELI-
4 GIOUS WORSHIP, nonprofit hospital, or nonprofit housing. A non-
5 profit hospital or nonprofit housing includes only the property
6 of a nonprofit hospital or the homes or dwelling places con-
7 structed by a nonprofit housing entity qualified as exempt pursu-
8 ant to section 15a of the state housing development authority act
9 of 1966, Act No. 346 of the Public Acts of 1966, being section
10 125.1415a of the Michigan Compiled Laws, the income or property
11 of which does not directly or indirectly inure to the benefit of
12 an individual, private stockholder, or other private person.

13 (d) "Sale at retail" includes a conditional sale, install-
14 ment lease sale, and other transfer of property if 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 if 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) "Sale at retail" does not include a commercial advertis-
17 ing element if the commercial advertising element is used to
18 create or develop a print, radio, television, or other advertise-
19 ment, the commercial advertising element is discarded or returned
20 to the provider after the advertising message is completed, and
21 the commercial advertising element is custom developed by the
22 provider for the purchaser. As used in this subdivision,
23 "commercial advertising element" means a negative or positive
24 photographic image, an audiotape or videotape master, a layout, a
25 manuscript, writing of copy, a design, artwork, an illustration,
26 retouching, and mechanical or keyline instructions. "Sale at
27 retail" includes black and white or full color process separation

1 elements, an audiotape reproduction, or a videotape
2 reproduction.

3 (i) "Gross proceeds" means the amount received in money,
4 credits, subsidies, property, or other money's worth in consider-
5 ation of a sale at retail within this state, without a deduction
6 for the cost of the property sold, the cost of material used, the
7 cost of labor or service purchased, an amount paid for interest
8 or a discount, a tax paid on cigarettes or tobacco products at
9 the time of purchase, a tax paid on beer or liquor at the time of
10 purchase or other expenses. Also, a deduction is not allowed for
11 losses. Gross proceeds does not include an amount received or
12 billed by the taxpayer for remittance to the employee as a gratui-
13 ty or tip, if the gratuity or tip is separately identified and
14 itemized on the guest check or billed to the customer. In a tax-
15 able sale at retail of a motor vehicle, if another motor vehicle
16 is used as part payment of the purchase price, the value of the
17 motor vehicle used as part payment of the purchase price shall be
18 that value agreed to by the parties to the sale as evidenced by
19 the signed statement executed pursuant to section 251 of the
20 Michigan vehicle code, Act No. 300 of the Public Acts of 1949,
21 being section 257.251 of the Michigan Compiled Laws. A credit or
22 refund for returned goods or a refund less an allowance for use
23 made for a motor vehicle returned under Act No. 87 of the Public
24 Acts of 1986, being sections 257.1401 to 257.1410 of the Michigan
25 Compiled Laws, as certified by the manufacturer on a form pro-
26 vided by the department of treasury, may be deducted.

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

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

8 (l) "Department" means the revenue division of the depart-
9 ment of treasury.

10 (m) "Taxpayer" means a person subject to a tax under this
11 act.

12 (n) "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.