

SUBSTITUTE FOR
HOUSE BILL NO. 5053

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 1 (MCL 205.51), as amended by 1997 PA 193.

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, munic-
4 ipal or private corporation whether organized for profit or not,
5 company, estate, trust, receiver, trustee, syndicate, the United
6 States, this state, county, or any other group or combination
7 acting as a unit, and includes the plural as well as the singular
8 number, unless the intention to give a more limited meaning is
9 disclosed by the context.

10 (b) "Sale at retail" means a transaction by which the
11 ownership of tangible personal property is transferred for

HB5053, As Passed House, April 2, 1998

Sub. H.B. 5053 (H-2) as amended February 5, 1998

2

1 consideration, if the transfer is made in the ordinary course of
2 the transferor's business and is made to the transferee for con-
3 sumption or use, or for any purpose other than for resale, or for
4 lease, if the rental receipts are taxable under the use tax act,
5 1937 PA 94, MCL 205.91 to 205.111, in the form of tangible per-
6 sonal property to a person licensed under this act, or for demon-
7 stration purposes or lending or leasing to a public or parochial
8 school offering a course in automobile driving. However, a vehi-
9 cle purchased by the school shall be certified for driver educa-
10 tion and shall not be reassigned for personal use of the school's
11 administrative personnel. For a dealer selling a new car or
12 truck, the exemption for demonstration purposes shall be deter-
13 mined by the number of new cars and trucks sold during the cur-
14 rent calendar year or the immediately preceding year without
15 regard to specific make or style in accordance with the following
16 schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20
17 units; 501 or more, 25 units; but not to exceed 25 cars and
18 trucks in a calendar year for demonstration purposes.

19 (c) "Sale at retail" includes the sale of tangible personal
20 property to persons directly engaged in the business of con-
21 structing, altering, repairing, or improving real estate for
22 others except property affixed to and made a structural part of
23 the real estate [~~of~~ OWNED AND OCCUPIED BY] a PUBLIC COLLEGE OR
UNIVERSITY, nonprofit hos-
24 pital or nonprofit housing. A PUBLIC COLLEGE OR UNIVERSITY
25 INCLUDES ONLY A UNIVERSITY DESCRIBED IN SECTION 4, 5, OR 6 OF
26 ARTICLE VIII OF THE STATE CONSTITUTION OF 1963. A nonprofit
27 hospital or nonprofit housing includes only the property of a

HB5053, As Passed House, April 2, 1998

House Bill No. 5053

3

1 nonprofit hospital or the homes or dwelling places constructed by
2 a nonprofit housing entity qualified as exempt pursuant to sec-
3 tion 15a of the state housing development authority act of 1966,
4 1966 PA 346, MCL 125.1415a, the income or property of which does
5 not directly or indirectly inure to the benefit of an individual,
6 private stockholder, or other private person. FOR TAXES LEVIED
7 AFTER DECEMBER 31, 1991, AS USED IN THIS SUBDIVISION, "HOSPITAL"
8 MEANS A SEPARATELY ORGANIZED ENTITY, OR A GROUP OF ENTITIES SUFFI-
9 CIENTLY RELATED TO BE CONSIDERED A SINGLE EMPLOYER FOR PURPOSES
10 OF SECTION 414 OF THE INTERNAL REVENUE CODE, THE PRIMARY PURPOSE
11 OF WHICH IS TO PROVIDE MEDICAL, OBSTETRICAL, PSYCHIATRIC, OR SUR-
12 GICAL CARE OR NURSING. NURSING INCLUDES CARE PROVIDED BY SKILLED
13 NURSES IN A LONG TERM CARE FACILITY.

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

18 (e) "Sale at retail" includes the sale of electricity, natu-
19 ral or artificial gas, or steam if the sale is made to the con-
20 sumer or user for consumption or use rather than for resale.
21 Sale at retail also includes the sale of a prepaid telephone
22 calling card or a prepaid authorization number for telephone use,
23 rather than for resale. Sale at retail also includes the reau-
24 thorization of a prepaid telephone calling card or a prepaid
25 authorization number. Sale at retail does not include the sale
26 of water through water mains or the sale of water delivered in
27 bulk tanks in quantities of not less than 500 gallons.

HB5053, As Passed House, April 2, 1998

House Bill No. 5053

4

1 (f) "Sale at retail" includes computer software offered for
2 general sale to the public or software modified or adapted to the
3 user's needs or equipment by the seller, only if the software is
4 available for sale from a seller of software on an as is basis or
5 as an end product without modification or adaptation. Sale at
6 retail does not include specific charges for technical support or
7 for adapting or modifying prewritten, standard, or canned com-
8 puter software programs to a purchaser's needs or equipment if
9 those charges are separately stated and identified. Sale at
10 retail does not include computer software originally designed for
11 the exclusive use and special needs of the purchaser. As used in
12 this subdivision, "computer software" means a set of statements
13 or instructions that when incorporated in a machine usable medium
14 is capable of causing a machine or device having information pro-
15 cessing capabilities to indicate, perform, or achieve a particu-
16 lar function, task, or result.

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

21 (h) "Sale at retail" does not include a commercial advertis-
22 ing element if the commercial advertising element is used to
23 create or develop a print, radio, television, or other advertise-
24 ment, the commercial advertising element is discarded or returned
25 to the provider after the advertising message is completed, and
26 the commercial advertising element is custom developed by the
27 provider for the purchaser. As used in this subdivision,

HB5053, As Passed House, April 2, 1998

House Bill No. 5053

5

1 "commercial advertising element" means a negative or positive
2 photographic image, an audiotape or videotape master, a layout, a
3 manuscript, writing of copy, a design, artwork, an illustration,
4 retouching, and mechanical or keyline instructions. Sale at
5 retail includes black and white or full color process separation
6 elements, an audiotape reproduction, or a videotape
7 reproduction.

8 (i) "Gross proceeds" means the amount received in money,
9 credits, subsidies, property, or other money's worth in consider-
10 ation of a sale at retail within this state, without a deduction
11 for the cost of the property sold, the cost of material used, the
12 cost of labor or service purchased, an amount paid for interest
13 or a discount, a tax paid on cigarettes or tobacco products at
14 the time of purchase, a tax paid on beer or liquor at the time of
15 purchase or other expenses. Also, a deduction is not allowed for
16 losses. Gross proceeds does not include an amount received or
17 billed by the taxpayer for remittance to the employee as a gratu-
18 ity or tip, if the gratuity or tip is separately identified and
19 itemized on the guest check or billed to the customer. In a tax-
20 able sale at retail of a motor vehicle, if another motor vehicle
21 is used as part payment of the purchase price, the value of the
22 motor vehicle used as part payment of the purchase price shall be
23 that value agreed to by the parties to the sale as evidenced by
24 the signed statement executed pursuant to section 251 of the
25 Michigan vehicle code, 1949 PA 300, MCL 257.251. A credit or
26 refund for returned goods or a refund less an allowance for use
27 made for a motor vehicle returned under 1986 PA 87, MCL 257.1401

HB5053, As Passed House, April 2, 1998

House Bill No. 5053

6

1 to 257.1410, as certified by the manufacturer on a form provided
2 by the department of treasury, may be deducted.

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

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

10 (l) "Department" means the revenue division of the depart-
11 ment of treasury.

12 (m) "Taxpayer" means a person subject to a tax under this
13 act.

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

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