

# HOUSE BILL No. 4342

February 27, 2001, Introduced by Reps. Bisbee, Bishop, Ehardt, Julian, Gosselin, Ruth Johnson, Van Woerkom, Rocca and Anderson and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled  
"General sales tax act,"  
by amending section 1 (MCL 205.51), as amended by 2000 PA 390,  
and by adding section 11.

**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.

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

21 (c) "Sale at retail" includes a conditional sale, install-  
22 ment lease sale, or other transfer of property if title is  
23 retained as security for the purchase price but is intended to be  
24 transferred later.

25 (d) "Sale at retail" includes the sale of electricity, natu-  
26 ral or artificial gas, or steam, if the sale is made to the  
27 consumer or user for consumption or use rather than for resale.

1 Beginning September 20, 1999, sale at retail also includes the  
2 sale of the transmission and distribution of electricity, whether  
3 the electricity is purchased from the delivering utility or from  
4 another provider, if the sale is made to the consumer or user of  
5 the electricity for consumption or use rather than for resale.  
6 Sale at retail also includes the sale of a prepaid telephone  
7 calling card or a prepaid authorization number for telephone use,  
8 rather than for resale, and also includes the reauthorization of  
9 a prepaid telephone calling card or a prepaid authorization  
10 number. Sale at retail does not include the sale of water  
11 through water mains or the sale of water delivered in bulk tanks  
12 in quantities of not less than 500 gallons.

13 (e) "Sale at retail" includes computer software offered for  
14 general sale to the public or software modified or adapted to the  
15 user's needs or equipment by the seller, only if the software is  
16 available for sale from a seller of software on an as is basis or  
17 as an end product without modification or adaptation. Sale at  
18 retail does not include specific charges for technical support or  
19 for adapting or modifying prewritten, standard, or canned com-  
20 puter software programs to a purchaser's needs or equipment if  
21 those charges are separately stated and identified. Sale at  
22 retail does not include computer software originally designed for  
23 the exclusive use and special needs of the purchaser. As used in  
24 this subdivision, "computer software" means a set of statements  
25 or instructions that when incorporated in a machine usable medium  
26 is capable of causing a machine or device having information

1 processing capabilities to indicate, perform, or achieve a  
2 particular function, task, or result.

3 (f) "Sale at retail" includes the sale of tangible personal  
4 property by an industrial laundry under a sale, rental, or serv-  
5 ice agreement with a term of at least 5 days.

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

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

24 (i) "Gross proceeds" means the amount received in money,  
25 credits, subsidies, property, or other money's worth in consider-  
26 ation of a sale at retail within this state, without a deduction  
27 for the cost of the property sold, the cost of material used, the

1 cost of labor or service purchased, an amount paid for interest  
2 or a discount, a tax paid on cigarettes or tobacco products at  
3 the time of purchase, a tax paid on beer or liquor at the time of  
4 purchase or other expenses, BUT WITH A DEDUCTION FOR THE AMOUNT  
5 OF ANY FEDERAL GASOLINE TAX PAID ON GASOLINE AT THE TIME OF  
6 PURCHASE. Also, a deduction is not allowed for losses. Gross  
7 proceeds do not include an amount received or billed by the tax-  
8 payer for remittance to the employee as a gratuity or tip, if the  
9 gratuity or tip is separately identified and itemized on the  
10 guest check or billed to the customer. In a taxable sale at  
11 retail of a motor vehicle, if another motor vehicle is used as  
12 part payment of the purchase price, the value of the motor vehi-  
13 cle used as part payment of the purchase price shall be that  
14 value agreed to by the parties to the sale as evidenced by the  
15 signed statement executed pursuant to section 251 of the Michigan  
16 vehicle code, 1949 PA 300, MCL 257.251. A credit or refund for  
17 returned goods or a refund less an allowance for use made for a  
18 motor vehicle returned under 1986 PA 87, MCL 257.1401 to  
19 257.1410, as certified by the manufacturer on a form provided by  
20 the department of treasury, may be deducted.

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

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

1 (l) "Department" means the revenue division of the  
2 department of treasury.

3 (m) "Taxpayer" means a person subject to a tax under this  
4 act.

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

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

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.

26 SEC. 11. EACH YEAR THE STATE TREASURER SHALL ESTIMATE THE  
27 AMOUNT OF SALES TAX THAT WAS NOT COLLECTED BECAUSE OF THE

1 DEDUCTION FROM GROSS PROCEEDS OF THE AMOUNT OF ANY FEDERAL  
2 GASOLINE TAX PAID ON GASOLINE AT THE TIME OF PURCHASE UNDER SEC-  
3 TION 1(1)(I), AND THAT AMOUNT SHALL BE TRANSFERRED FROM THE GEN-  
4 ERAL FUND TO THE STATE SCHOOL AID FUND.