

SUBSTITUTE FOR
HOUSE BILL NO. 4039

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 2021 PA 108.

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
5 not, company, **limited liability company**, estate, trust, receiver,
6 trustee, syndicate, the United States, this state, county, or any
7 other group or combination acting as a unit, and includes the
8 plural as well as the singular number, unless the intention to give

1 a more limited meaning is disclosed by the context.

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

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

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

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

14 (ii) Cost of materials used, labor or service cost, interest,
15 losses, costs of transportation to the seller, taxes imposed on the
16 seller other than taxes imposed by this act, and any other expense
17 of the seller.

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

20 (A) An amount received or billed by the taxpayer for
21 remittance to the employee as a gratuity or tip, if the gratuity or
22 tip is separately identified and itemized on the guest check or
23 billed to the customer.

24 (B) Labor or service charges involved in maintenance and
25 repair work on tangible personal property of others if separately
26 itemized.

27 (iv) ~~Delivery~~ **Except as otherwise provided in subparagraph**
28 **(xv), delivery** charges. ~~incurred or to be incurred before the~~
29 ~~completion of the transfer of ownership of tangible personal~~

1 ~~property subject to the tax levied under this act from the seller~~
2 ~~to the purchaser.~~ A seller is not liable under this act for
3 delivery charges allocated to the delivery of exempt property.

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

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

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

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

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

18 (C) The amount of the consideration attributable to the sale
19 is fixed and determinable by the seller at the time of the sale of
20 the item to the purchaser.

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

22 (I) The purchaser presents a coupon, certificate, or other
23 documentation to the seller to claim a price reduction or discount
24 where the coupon, certificate, or documentation is authorized,
25 distributed, or granted by a third party with the understanding
26 that the third party will reimburse any seller to whom the coupon,
27 certificate, or documentation is presented.

28 (II) The purchaser identifies himself or herself to the seller
29 as a member of a group or organization entitled to a price

1 reduction or discount. A preferred customer card that is available
2 to any patron does not constitute membership in a group or
3 organization.

4 (III) The price reduction or discount is identified as a third
5 party price reduction or discount on the invoice received by the
6 purchaser or on a coupon, certificate, or other documentation
7 presented by the purchaser.

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

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

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

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

24 (xii) Beginning December 15, 2013, credit for the agreed-upon
25 value of a motor vehicle or recreational vehicle used as part
26 payment of the purchase price of a new motor vehicle or used motor
27 vehicle or recreational vehicle purchased from a dealer if the
28 agreed-upon value is separately stated on the invoice, bill of
29 sale, or similar document given to the purchaser. This subparagraph

1 does not apply to leases or rentals. Except as otherwise provided
2 under subparagraph (xiv), for purposes of this subparagraph, the
3 agreed-upon value of a motor vehicle or recreational vehicle used
4 as part payment ~~shall be~~ **is** limited as follows:

5 (A) Beginning December 15, 2013, subject to sub-subparagraphs
6 (B) and (C), the lesser of the following:

7 (I) \$2,000.00.

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

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

13 (C) Beginning January 1, 2019, subject to sub-subparagraphs
14 (D) and (E), the lesser of the following:

15 (I) \$5,000.00.

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

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

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

25 (xiii) Beginning January 1, 2017, credit for the core charge
26 attributable to a recycling fee, deposit, or disposal fee for a
27 motor vehicle or recreational vehicle part or battery if the
28 recycling fee, deposit, or disposal fee is separately stated on the
29 invoice, bill of sale, or similar document given to the purchaser.

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

7 (xv) **Delivery or installation charges if such charges are**
8 **separately stated on the invoice, bill of sale, or similar document**
9 **provided to the purchaser, and the seller maintains its books and**
10 **records to show separately the transactions used to determine the**
11 **tax levied by this act. This subdivision does not apply to delivery**
12 **or installation charges involving or relating to the sale of**
13 **electricity, natural gas, or artificial gas by a utility.**

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 (o) "Utility" means either of the following:

13 (i) **A person regulated by the Michigan public service**
14 **commission as a utility.**

15 (ii) **A person that operates equipment or facilities for**
16 **producing, generating, transmitting, delivering, or furnishing**
17 **electricity within this state for the public for compensation,**
18 **regardless of the person's owner, ownership structure, or**
19 **regulation by the Michigan public service commission.**

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

1 dealer, distributor, supervisor, or employer as making sales at
2 retail at the retail price for the purposes of this act.

3 (3) Notwithstanding anything to the contrary in this act, the
4 following applies only to delivery and installation charges
5 described in subsection (1) (d) (iv) or (v), except that this
6 subsection does not apply to delivery and installation charges
7 involving or relating to the sale of electricity, natural gas, or
8 artificial gas by a utility:

9 (a) Not later than 90 days after the effective date of the
10 amendatory act that added this subsection, the department shall
11 cancel all outstanding balances related to such delivery and
12 installation charges on notices of intent to assess that were
13 issued under section 21 of 1941 PA 122, MCL 205.21, for the tax
14 levied under this act and that were issued before the effective
15 date of the amendatory act that added this subsection.

16 (b) Not later than 90 days after the effective date of the
17 amendatory act that added this subsection, the department shall
18 cancel all outstanding balances related to such delivery and
19 installation charges on final assessments that were issued under
20 section 22 of 1941 PA 122, MCL 205.22, for the tax levied under
21 this act, and that were issued before the effective date of the
22 amendatory act that added this subsection.

23 (c) After the effective date of the amendatory act that added
24 this subsection, the department shall not issue any new assessments
25 for the tax levied under this act on such delivery and installation
26 charges for any tax period before the effective date of the
27 amendatory act that added this subsection that is open under the
28 statute of limitations provided in section 27a of 1941 PA 122, MCL
29 205.27a.

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

5 (2) Fifteen percent of the collections of the tax imposed at a
6 rate of 4% must be distributed to cities, villages, and townships
7 pursuant to the Glenn Steil state revenue sharing act of 1971, 1971
8 PA 140, MCL 141.901 to 141.921.

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

16 (4) Except as otherwise provided in this subsection, not less
17 than 27.9% of 25% of the collections of the general sales tax
18 imposed at a rate of 4% directly or indirectly on fuels sold to
19 propel motor vehicles upon highways, on the sale of motor vehicles,
20 and on the sale of the parts and accessories of motor vehicles by
21 new and used car businesses, used car businesses, accessory dealer
22 businesses, and gasoline station businesses as classified by the
23 department must be deposited each year into the comprehensive
24 transportation fund. For the fiscal year ending September 30, 2021
25 only, the amount deposited into the comprehensive transportation
26 fund under this subsection must be reduced by \$18,000,000.00 and
27 that \$18,000,000.00 must be deposited into the transportation
28 administration collection fund.

29 (5) Beginning October 1, 2016 and the first day of each

1 calendar quarter thereafter, an amount equal to the collections for
2 the calendar quarter that is 2 calendar quarters immediately
3 preceding the current calendar quarter of the tax imposed under
4 this act at the additional rate of 2% approved by the electors on
5 March 15, 1994 from the sale at retail of aviation fuel must be
6 distributed as follows:

7 (a) An amount equal to 35% of the collections of the tax
8 imposed at a rate of 2% on the sale at retail of aviation fuel must
9 be deposited in the state aeronautics fund and must be expended, on
10 appropriation, only for those purposes authorized in the
11 aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1
12 to 259.208.

13 (b) An amount equal to 65% of the collections of the tax
14 imposed at a rate of 2% on the sale at retail of aviation fuel must
15 be deposited in the qualified airport fund and must be expended, on
16 appropriation, only for those purposes authorized under section 35
17 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL
18 259.35.

19 (6) The department shall, on an annual basis, reconcile the
20 amounts distributed under subsection (5) during each fiscal year
21 with the amounts actually collected for a particular fiscal year
22 and shall make any necessary adjustments, positive or negative, to
23 the amounts to be distributed for the next successive calendar
24 quarter that begins January 1. The state treasurer or ~~his or her~~
25 **the state treasurer's** designee shall annually provide to the
26 operator of each qualified airport a report of the reconciliation
27 performed under this subsection. The reconciliation report is
28 subject to the confidentiality restrictions and penalties provided
29 in section 28(1)(f) of 1941 PA 122, MCL 205.28.

1 (7) An amount equal to the collections of the tax imposed at a
2 rate of 4% under this act from the sale at retail of computer
3 software must be deposited in the Michigan health initiative fund
4 created in section 5911 of the public health code, 1978 PA 368, MCL
5 333.5911, and must be considered in addition to, and is not
6 intended as a replacement for any other money appropriated to the
7 department of health and human services. The funds deposited in the
8 Michigan health initiative fund on an annual basis must not be less
9 than \$9,000,000.00 or more than \$12,000,000.00.

10 (8) ~~An~~ **In addition to the money deposited in the state school**
11 **aid fund under subsection (3),** an amount equal to all revenue lost
12 ~~to the state school aid fund as a result of the exemptions under~~
13 ~~sections 4a(1)(u) and 4ee,~~ **the sum of the following,** as determined
14 by the department, must be deposited into the state school aid
15 fund: ~~established in section 11 of article IX of the state~~
16 ~~constitution of 1963. Money deposited into the state school aid~~
17 ~~fund under this subsection must not include and must be considered~~
18 ~~in addition to money deposited in the state school aid fund under~~
19 ~~subsection (3).~~

20 (a) **All revenue lost to the state school aid fund as a result**
21 **of the exemption under section 4a(1)(u).**

22 (b) **All revenue lost to the state school aid fund as a result**
23 **of the exemption under section 4ee.** A person that claims an
24 exemption under section 4ee shall report the sales price of the
25 data center equipment as defined in section 4ee and any other
26 information necessary to determine the amount of revenue lost to
27 the state school aid fund as a result of the exemption under
28 section 4ee annually on a form at the time and in a manner
29 prescribed by the department. The report required under this

1 ~~subsection~~**subdivision** must not include any remittance for tax, and
2 does not constitute a return or otherwise alleviate any obligations
3 under section 6.

4 **(c) All revenue lost to the state school aid fund as a result**
5 **of the exclusion under section 1(1) (d) (xv) .**

6 (9) The balance in the state general fund shall be disbursed
7 only on an appropriation or appropriations by the legislature.

8 (10) As used in this section:

9 (a) "Aviation fuel" means fuel as that term is defined in
10 section 4 of the aeronautics code of the state of Michigan, 1945 PA
11 327, MCL 259.4.

12 (b) "Comprehensive transportation fund" means the
13 comprehensive transportation fund created in section 10b of 1951 PA
14 51, MCL 247.660b.

15 (c) "Qualified airport" means that term as defined in section
16 109 of the aeronautics code of the state of Michigan, 1945 PA 327,
17 MCL 259.109.

18 (d) "Qualified airport fund" means the qualified airport fund
19 created in section 34(2) of the aeronautics code of the state of
20 Michigan, 1945 PA 327, MCL 259.34.

21 (e) "State aeronautics fund" means the state aeronautics fund
22 created in section 34(1) of the aeronautics code of the state of
23 Michigan, 1945 PA 327, MCL 259.34.

24 **(f) "State school aid fund" means the state school aid fund**
25 **established in section 11 of article IX of the state constitution**
26 **of 1963.**

27 **(g) ~~(f)~~**"Transportation administration collection fund" means
28 the transportation administration collection fund created in
29 section 810b of the Michigan vehicle code, 1949 PA 300, MCL

1 257.810b.