

HOUSE BILL No. 4855

May 29, 1997, Introduced by Reps. Profit and Palamara and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 4g (MCL 205.54g), as amended by 1996 PA 576.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 4g. (1) A person subject to tax under this act may
2 exclude from the amount of the gross proceeds used for the compu-
3 tation of the tax 1 or more of the following:
- 4 (a) Sales of prescription drugs for human use or food for
5 human consumption, except prepared food intended for immediate
6 consumption.
- 7 (b) The deposit on a returnable container for a beverage or
8 the deposit on a carton or case that is used for returnable
9 containers.
- 10 (c) Food or tangible personal property purchased with
11 federal food stamps.

1 (d) Fruit or vegetable seeds and fruit or vegetable plants
2 if purchased at a place of business authorized to accept food
3 stamps by the food and nutrition service of the United States
4 department of agriculture or a place of business that has made a
5 complete and proper application for authorization to accept food
6 stamps but has been denied authorization and provides proof of
7 denial to the department of treasury.

8 (e) The product of the out-of-state usage percentage and the
9 gross proceeds otherwise taxable under this act from the sale of
10 a qualified truck or a trailer designed to be drawn behind a
11 qualified truck, purchased after December 31, 1996 and before
12 May 1, 1999 by an interstate motor carrier and used in interstate
13 commerce. As used in this subdivision:

14 (i) "Interstate motor carrier" means a person engaged in the
15 business of carrying persons or property, other than themselves,
16 their employees, or their own property, for hire across state
17 lines, whose fleet mileage was driven at least 10% outside of
18 this state in the immediately preceding tax year.

19 (ii) "Out-of-state usage percentage" is a fraction, the
20 numerator of which is the number of miles driven outside of this
21 state in the immediately preceding tax year by qualified trucks
22 used by the interstate motor carrier and the denominator of which
23 is the total miles driven in the immediately preceding tax year
24 by qualified trucks used by the interstate motor carrier. Miles
25 driven by qualified trucks used solely in intrastate commerce
26 shall not be included in calculating the out-of-state usage
27 percentage.

1 (iii) "Qualified truck" means a commercial motor vehicle
2 power unit that has 2 axles and a gross vehicle weight rating in
3 excess of 10,000 pounds or a commercial motor vehicle power unit
4 that has 3 or more axles.

5 (2) "Prescription drugs for human use" means insulin or a
6 drug dispensed by a licensed pharmacist pursuant to a written
7 prescription prescribed by a licensed physician or other health
8 professional as defined by section 21005 of the public health
9 code, ~~Act No. 368 of the Public Acts of 1978, being~~
10 ~~section 333.21005 of the Michigan Compiled Laws~~ 1978 PA 368, MCL
11 333.21005, for the use of a designated person, or oxygen dis-
12 pensed pursuant to a written prescription or order issued by a
13 licensed physician or other health professional as defined in
14 section 21005 of ~~Act No. 368 of the Public Acts of 1978~~ THE
15 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.21005.

16 (3) "Food for human consumption" means all food and drink
17 items, including bottled water, intended primarily for human con-
18 sumption except beverages with an alcohol content of 1/2 of 1% or
19 more by volume, tobacco and tobacco products, and prepared food
20 intended for immediate consumption. Food for human consumption
21 includes live animals purchased with the intent to be slaughtered
22 for human consumption.

23 (4) "Prepared food intended for immediate consumption" means
24 a retail sale of 1 or more of the following:

25 (a) Food or drink prepared and served for immediate consump-
26 tion at or near the premises or ordinarily sold on a takeout
27 basis for immediate consumption either on or off the premises.

1 For the purposes of this section premises includes the total
2 space and facilities in or on which a retailer conducts his or
3 her business, including, but not limited to, parking areas for
4 the convenience of in-car consumption, outdoor tables, benches,
5 chairs, and similar conveniences.

6 (b) Food or drink furnished, prepared, or served for immedi-
7 ate consumption at a table, chair, or counter or from a tray,
8 glass, dish, container, or other tableware.

9 (c) Food or drink arranged on a plate or platter, whether
10 intended for individual or multiple servings and whether sold by
11 the pound or by the serving; a sandwich, either hot or cold; or a
12 combination of taxable and nontaxable items when sold as a plate
13 or packaged as a meal, even though intended for more than 1
14 serving.

15 (d) Food that is cooked to the order of the purchaser, or
16 that is cooked and maintained at a temperature higher than the
17 surrounding air temperature before sale, or prepared food that is
18 sold by the piece rather than by weight or measure.

19 (e) Carbonated beverages sold from a mobile facility or
20 vending machine, OR AT A MOTION PICTURE THEATER, or food or drink
21 heated or cooled mechanically, electrically, or by other artifi-
22 cial means to an average temperature above 75 degrees fahrenheit
23 or below 65 degrees fahrenheit before sale and sold from a mobile
24 facility or vending machine, OR AT A MOTION PICTURE THEATER,
25 except milk, noncarbonated beverages containing 10% or more juice
26 content, and fresh fruit. The tax due under this act on the sale
27 of food or drink from a vending machine selling both taxable

1 items and items exempt under this subsection shall be calculated
2 based on 1 of the following as determined by the taxpayer:

3 (i) Actual gross proceeds from sales at retail.

4 (ii) The sum of proceeds from carbonated beverages and 45%
5 of proceeds from the sale of items subject to tax under this act
6 or exempt from the tax levied under this act, other than from the
7 sale of carbonated beverages.

8 (5) Prepared food intended for immediate consumption does
9 not include bakery products for off-premises consumption, such as
10 doughnuts, pastry, bread, and cakes or meals eligible to be pur-
11 chased with federal food stamps.