

SENATE BILL No. 717

September 23, 2003, Introduced by Senators SWITALSKI, JACOBS and SANBORN and referred to the Committee on Finance.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 4g (MCL 205.54g), as amended by 2000 PA 417.

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
3 computation 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 federal
11 food stamps.

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

8 (2) "Prescription drugs for human use" means insulin or a
9 drug dispensed by a licensed pharmacist pursuant to a written
10 prescription prescribed by a licensed physician or other health
11 professional as defined by section ~~21005 of the public health~~
12 ~~code, 1978 PA 368, MCL 333.21005~~ **3501 of the insurance code of**
13 **1956, 1956 PA 218, MCL 500.3501**, for the use of a designated
14 person, or oxygen dispensed pursuant to a written prescription or
15 order issued by a licensed physician or other health professional
16 as defined in section ~~21005 of the public health code, 1978~~
17 ~~PA 368, MCL 333.21005~~ **3501 of the insurance code of 1956, 1956**
18 **PA 218, MCL 500.3501.**

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

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

1 (a) Food or drink prepared and served for immediate
2 consumption at or near the premises or ordinarily sold on a
3 takeout basis for immediate consumption either on or off the
4 premises. For the purposes of this section premises includes the
5 total space and facilities in or on which a retailer conducts his
6 or her business, including, but not limited to, parking areas for
7 the convenience of in-car consumption, outdoor tables, benches,
8 chairs, and similar conveniences.

9 (b) Food or drink furnished, prepared, or served for
10 immediate consumption at a table, chair, or counter or from a
11 tray, glass, dish, container, or other tableware.

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

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

22 (e) Food or drink heated or cooled mechanically,
23 electrically, or by other artificial means to an average
24 temperature above 75 degrees Fahrenheit or below 65 degrees
25 ~~Fahrenheit~~ **Fahrenheit** before sale and sold from a mobile
26 facility or vending machine, except milk, nonalcoholic beverages
27 in a sealed container, and fresh fruit. A refund shall not be

1 made for any taxes paid after December 31, 1994 and before
2 January 16, 1997 for food or drink otherwise exempt under this
3 subdivision. The tax due under this act on the sale of food or
4 drink from a vending machine selling both taxable items and items
5 exempt under this subsection shall be calculated under this act
6 after December 31, 1994 based on 1 of the following as determined
7 by the taxpayer:

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

9 (ii) Forty-five percent of proceeds from the sale of items
10 subject to tax under this act or exempt from the tax levied under
11 this act, other than from the sale of carbonated beverages.

12 (5) Prepared food intended for immediate consumption does not
13 include bakery products for off-premises consumption, such as
14 doughnuts, pastry, bread, and cakes; meals eligible to be
15 purchased with federal food stamps; or nonalcoholic beverages and
16 prepared food intended for immediate consumption provided during
17 work hours for free or at a reduced rate to employees of food
18 service establishments licensed by the Michigan department of
19 agriculture. As used in this subsection, "food service
20 establishment" means that term as defined in section 1107 of the
21 food law of 2000, 2000 PA 92, MCL 289.1107.

22 (6) Prepared food intended for immediate consumption does not
23 include items sold at a state park concession if those items
24 would not be taxable if purchased at a grocery store, such as
25 fresh eggs, boxes of cereal, or a loaf of bread.