

HOUSE BILL No. 4581

April 5, 2007, Introduced by Rep. Condino and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending sections 1 and 2 (MCL 205.51 and 205.52), as amended by
2004 PA 173.

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, estate, trust, receiver, trustee, syndicate, the
6 United States, this state, county, or any other group or
7 combination acting as a unit, and includes the plural as well as
8 the singular number, unless the intention to give a more limited
9 meaning is disclosed by the context.

10 (b) "Sale at retail" or "retail sale" means a sale, lease, or

1 rental of tangible personal property **OR SERVICES** for any purpose
2 other than for resale, sublease, or subrent.

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

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

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

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

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

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

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

25 (iv) Delivery charges incurred or to be incurred before the
26 completion of the transfer of ownership of tangible personal
27 property from the seller to the purchaser.

1 (v) Installation charges incurred or to be incurred before the
2 completion of the transfer of ownership of tangible personal
3 property from the seller to the purchaser.

4 (vi) Credit for any trade-in.

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

9 (viii) Any taxes legally imposed directly on the consumer that
10 are separately stated on the invoice, bill of sale, or similar
11 document given to the purchaser.

12 (e) "Business" includes an activity engaged in by a person or
13 caused to be engaged in by that person with the object of gain,
14 benefit, or advantage, either direct or indirect.

15 (f) "Tax year" or "taxable year" means the fiscal year of the
16 state or the taxpayer's fiscal year if permission is obtained by
17 the taxpayer from the department to use the taxpayer's fiscal year
18 as the tax period instead.

19 (g) "Department" means the department of treasury.

20 (h) "Taxpayer" means a person subject to a tax under this act.

21 (i) "Tax" includes a tax, interest, or penalty levied under
22 this act.

23 (j) "Textiles" means goods that are made of or incorporate
24 woven or nonwoven fabric, including, but not limited to, clothing,
25 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,
26 pillows, pillow cases, tablecloths, napkins, aprons, linens, floor
27 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) "DIRECT BROADCAST SATELLITE SERVICE" MEANS THE
4 DISTRIBUTION OR BROADCASTING OF VIDEO PROGRAMMING OR SERVICES BY
5 SATELLITE DIRECTLY TO THE CONSUMER'S RECEIVING EQUIPMENT WITHOUT
6 THE USE OF GROUND RECEIVING OR DISTRIBUTION EQUIPMENT, EXCEPT THE
7 CONSUMER'S RECEIVING EQUIPMENT OR EQUIPMENT USED IN THE UPLINK
8 PROCESS TO THE SATELLITE, AND INCLUDES ALL SERVICE AND RENTAL
9 CHARGES, PREMIUM CHANNELS OR OTHER SPECIAL SERVICES, INSTALLATION
10 AND REPAIR SERVICE CHARGES, AND ANY OTHER CHARGES HAVING ANY
11 CONNECTION WITH THE PROVISION OF THE SATELLITE BROADCASTING
12 SERVICE.

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

25 Sec. 2. (1) Except as provided in section 2a, there is levied
26 upon and there shall be collected from all persons engaged in the
27 business of making sales at retail, by which ownership of tangible

1 personal property is transferred for consideration, an annual tax
2 for the privilege of engaging in that business equal to 6% of the
3 gross proceeds of the business, plus the penalty and interest if
4 applicable as provided by law, less deductions allowed by this act.

5 (2) The tax under subsection (1) also applies to the
6 following:

7 (a) The transmission and distribution of electricity, whether
8 the electricity is purchased from the delivering utility or from
9 another provider, if the sale is made to the consumer or user of
10 the electricity for consumption or use rather than for resale.

11 (b) The sale of a prepaid telephone calling card or a prepaid
12 authorization number for telephone use, rather than for resale,
13 including the reauthorization of a prepaid telephone calling card
14 or a prepaid authorization number.

15 (c) A conditional sale, installment lease sale, or other
16 transfer of property, if title is retained as security for the
17 purchase but is intended to be transferred later.

18 **(D) THE SALE OF DIRECT BROADCAST SATELLITE SERVICE IF THE SALE**
19 **IS MADE TO THE CONSUMER OR USER OF THE DIRECT BROADCAST SATELLITE**
20 **SERVICE FOR CONSUMPTION OR USE RATHER THAN FOR RESALE.**

21 (3) Any person engaged in the business of making sales at
22 retail who is at the same time engaged in some other kind of
23 business, occupation, or profession not taxable under this act
24 shall keep books to show separately the transactions used in
25 determining the tax levied by this act. If the person fails to keep
26 separate books, there shall be levied upon him or her the tax
27 provided for in subsection (1) equal to 6% of the entire gross

1 proceeds of both or all of his or her businesses. The taxes levied
2 by this section are a personal obligation of the taxpayer.

3 (4) A meal provided free of charge or at a reduced rate to an
4 employee during work hours by a food service establishment licensed
5 by the Michigan department of agriculture for the convenience of
6 the employer is not considered transferred for consideration.