

# HOUSE BILL NO. 5862

June 26, 2024, Introduced by Reps. Smit and Rigas 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 2023 PA 20.

**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 **or not** organized for  
5       profit, ~~or not,~~ company, limited liability company, estate, trust,  
6       receiver, trustee, syndicate, the United States, this state,

1 county, or any other group or combination acting as a unit, and  
 2 includes the plural as well as the singular number, unless the  
 3 intention to give a more limited meaning is disclosed by the  
 4 context.

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

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

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

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

17 (ii) ~~Cost~~ **Except as otherwise provided in subparagraph (xvi),**  
 18 **cost** of materials used, labor or service cost, interest, losses,  
 19 costs of transportation to the seller, taxes imposed on the seller  
 20 other than taxes imposed by this act, and any other expense of the  
 21 seller.

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

24 (A) An amount received or billed by the taxpayer for  
 25 remittance to the employee as a gratuity or tip, if the gratuity or  
 26 tip is separately identified and itemized on the guest check or  
 27 billed to the customer.

28 (B) Labor or service charges involved in maintenance and  
 29 repair work on tangible personal property of others if separately

1 itemized.

2 (iv) Except as otherwise provided in subparagraph (xv),  
3 delivery charges. A seller is not liable under this act for  
4 delivery charges allocated to the delivery of exempt property.

5 (v) Except as otherwise provided in subparagraph (xv),  
6 installation charges.

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

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

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

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

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

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

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

27 (II) The purchaser identifies himself or herself to the seller  
28 as a member of a group or organization entitled to a price  
29 reduction or discount. A preferred customer card that is available

1 to any patron does not constitute membership in a group or  
2 organization.

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

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

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

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

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

23 (xii) Beginning December 15, 2013, credit for the agreed-upon  
24 value of a motor vehicle or recreational vehicle used as part  
25 payment of the purchase price of a new motor vehicle or used motor  
26 vehicle or recreational vehicle purchased from a dealer if the  
27 agreed-upon value is separately stated on the invoice, bill of  
28 sale, or similar document given to the purchaser. This subparagraph  
29 does not apply to leases or rentals. Except as otherwise provided

1 under subparagraph (xiv), for purposes of this subparagraph, the  
2 agreed-upon value of a motor vehicle or recreational vehicle used  
3 as part payment is limited as follows:

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

6 (I) \$2,000.00.

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

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

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

14 (I) \$5,000.00.

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

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

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

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

29 (xiv) Beginning January 1, 2018, credit for the agreed-upon

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

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

13 **(xvi) A credit card surcharge. As used in this subparagraph,**  
14 **"credit card surcharge" means a surcharge or other fee imposed for**  
15 **the use of a credit card.**

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

19 (f) "Tax year" or "taxable year" means the fiscal year of the  
20 state or the taxpayer's fiscal year if permission is obtained by  
21 the taxpayer from the department to use the taxpayer's fiscal year  
22 as the tax period instead.

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

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

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

27 (j) "Textiles" means goods that are made of or incorporate  
28 woven or nonwoven fabric, including, but not limited to, clothing,  
29 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,

1 pillows, ~~pillow cases,~~ **pillowcases**, tablecloths, napkins, aprons,  
2 linens, floor mops, floor mats, and thread. Textiles also include  
3 materials used to repair or construct textiles, or other goods used  
4 in the rental, sale, or cleaning of textiles.

5 (k) "New motor vehicle" means that term as defined in section  
6 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

7 (l) "Recreational vehicle" means that term as defined in  
8 section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

9 (m) "Dealer" means that term as defined in section 11 of the  
10 Michigan vehicle code, 1949 PA 300, MCL 257.11.

11 (n) "Watercraft dealer" means a dealer as that term is defined  
12 in section 80102 of the natural resources and environmental  
13 protection act, 1994 PA 451, MCL 324.80102.

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

15 (i) A person regulated by the Michigan public service  
16 commission as a utility.

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

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

1 behalf of the dealer, distributor, supervisor, or employer, the  
2 department may so regard the unlicensed person and may regard the  
3 dealer, distributor, supervisor, or employer as making sales at  
4 retail at the retail price for the purposes of this act.

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

11 (a) ~~Not later than 90 days after the effective date of the~~  
12 ~~amendatory act that added this subsection, **July 25, 2023,** the~~  
13 department shall cancel all outstanding balances related to such  
14 delivery and installation charges on notices of intent to assess  
15 that were issued under section 21 of 1941 PA 122, MCL 205.21, for  
16 the tax levied under this act and that were issued before ~~the~~  
17 ~~effective date of the amendatory act that added this~~  
18 ~~subsection.~~**April 26, 2023.**

19 (b) ~~Not later than 90 days after the effective date of the~~  
20 ~~amendatory act that added this subsection, **July 25, 2023,** the~~  
21 department shall cancel all outstanding balances related to such  
22 delivery and installation charges on final assessments that were  
23 issued under section 22 of 1941 PA 122, MCL 205.22, for the tax  
24 levied under this act, and that were issued before ~~the effective~~  
25 ~~date of the amendatory act that added this subsection.~~**April 26,**  
26 **2023.**

27 (c) ~~After the effective date of the amendatory act that added~~  
28 ~~this subsection, **Beginning April 26, 2023,** the department shall not~~  
29 issue any new assessments for the tax levied under this act on such



1 delivery and installation charges for any tax period before ~~the~~  
2 ~~effective date of the amendatory act that added this subsection~~  
3 **April 26, 2023**, that is open under the statute of limitations  
4 provided in section 27a of 1941 PA 122, MCL 205.27a.

5 **(4) Notwithstanding anything to the contrary in this act,**  
6 **subsection (1) (d) (xvi) is intended to be retroactive and to apply to**  
7 **all periods open under section 27a of 1941 PA 122, MCL 205.27a.**