

HOUSE BILL NO. 4039

January 24, 2023, Introduced by Reps. Outman, Tisdell, Cavitt, Hall and Schuette 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 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, estate, trust, receiver, trustee, syndicate, the

1 United States, this state, county, or any other group or
2 combination acting as a unit, and includes the plural as well as
3 the singular number, unless the intention to give a more limited
4 meaning is disclosed by the 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) ~~through to~~ (vii) and excludes
15 subparagraphs (viii) ~~through (xiv) to~~ (xv):

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

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

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

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

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

1 (iv) ~~Delivery~~ **Except as otherwise provided in subparagraph**
2 **(xv), delivery** charges. ~~incurred or to be incurred before the~~
3 ~~completion of the transfer of ownership of tangible personal~~
4 ~~property subject to the tax levied under this act from the seller~~
5 ~~to the purchaser.~~ A seller is not liable under this act for
6 delivery charges allocated to the delivery of exempt property.

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

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

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

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

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

21 (C) The amount of the consideration attributable to the sale
22 is fixed and determinable by the seller at the time of the sale of
23 the item to the purchaser.

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

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

1 certificate, or documentation is presented.

2 (II) The purchaser identifies himself or herself to the seller
3 as a member of a group or organization entitled to a price
4 reduction or discount. A preferred customer card that is available
5 to any patron does not constitute membership in a group or
6 organization.

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

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

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

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

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

27 (xii) Beginning December 15, 2013, credit for the agreed-upon
28 value of a motor vehicle or recreational vehicle used as part
29 payment of the purchase price of a new motor vehicle or used motor

1 vehicle or recreational vehicle purchased from a dealer if the
2 agreed-upon value is separately stated on the invoice, bill of
3 sale, or similar document given to the purchaser. This subparagraph
4 does not apply to leases or rentals. Except as otherwise provided
5 under subparagraph (xiv), for purposes of this subparagraph, the
6 agreed-upon value of a motor vehicle or recreational vehicle used
7 as part payment ~~shall be~~ **is** limited as follows:

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

10 (I) \$2,000.00.

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

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

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

18 (I) \$5,000.00.

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

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

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

28 (xiii) Beginning January 1, 2017, credit for the core charge
29 attributable to a recycling fee, deposit, or disposal fee for a

1 motor vehicle or recreational vehicle part or battery if the
2 recycling fee, deposit, or disposal fee is separately stated on the
3 invoice, bill of sale, or similar document given to the purchaser.

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

10 (xv) **Delivery or installation charges if such charges are**
11 **separately stated on the invoice, bill of sale, or similar document**
12 **provided to the purchaser, and the seller maintains its books and**
13 **records to show separately the transactions used to determine the**
14 **tax levied by this act.**

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

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

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

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

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

26 (j) "Textiles" means goods that are made of or incorporate
27 woven or nonwoven fabric, including, but not limited to, clothing,
28 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,
29 pillows, pillow cases, tablecloths, napkins, aprons, linens, floor

1 mops, floor mats, and thread. Textiles also include materials used
2 to repair or construct textiles, or other goods used in the rental,
3 sale, or cleaning of textiles.

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

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

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

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

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

29 (2) Fifteen percent of the collections of the tax imposed at a

1 rate of 4% must be distributed to cities, villages, and townships
2 pursuant to the Glenn Steil state revenue sharing act of 1971, 1971
3 PA 140, MCL 141.901 to 141.921.

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

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

24 (5) Beginning October 1, 2016 and the first day of each
25 calendar quarter thereafter, an amount equal to the collections for
26 the calendar quarter that is 2 calendar quarters immediately
27 preceding the current calendar quarter of the tax imposed under
28 this act at the additional rate of 2% approved by the electors on
29 March 15, 1994 from the sale at retail of aviation fuel must be

1 distributed as follows:

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

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

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

25 (7) An amount equal to the collections of the tax imposed at a
26 rate of 4% under this act from the sale at retail of computer
27 software must be deposited in the Michigan health initiative fund
28 created in section 5911 of the public health code, 1978 PA 368, MCL
29 333.5911, and must be considered in addition to, and is not

1 intended as a replacement for any other money appropriated to the
 2 department of health and human services. The funds deposited in the
 3 Michigan health initiative fund on an annual basis must not be less
 4 than \$9,000,000.00 or more than \$12,000,000.00.

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

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

17 (b) **All revenue lost to the state school aid fund as a result**
 18 **of the exemption under section 4ee.** A person that claims an
 19 exemption under section 4ee shall report the sales price of the
 20 data center equipment as defined in section 4ee and any other
 21 information necessary to determine the amount of revenue lost to
 22 the state school aid fund as a result of the exemption under
 23 section 4ee annually on a form at the time and in a manner
 24 prescribed by the department. The report required under this
 25 ~~subsection~~ **subdivision** must not include any remittance for tax, and
 26 does not constitute a return or otherwise alleviate any obligations
 27 under section 6.

28 (c) **All revenue lost to the state school aid fund as a result**
 29 **of the exclusion under section 1(1)(d)(xv).** A person that excludes

1 delivery or installation charges from the sales price of tangible
2 personal property under section 1(1)(d)(xv) for purposes of
3 calculating the tax due under this act shall report the amount of
4 the delivery or installation charges and any other information
5 necessary to determine the amount of revenue lost to the state
6 school aid fund as a result of the exclusion under section
7 1(1)(d)(xv) on an existing or amended form at the time and in a
8 manner prescribed by the department.

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

11 (10) As used in this section:

12 (a) "Aviation fuel" means fuel as that term is defined in
13 section 4 of the aeronautics code of the state of Michigan, 1945 PA
14 327, MCL 259.4.

15 (b) "Comprehensive transportation fund" means the
16 comprehensive transportation fund created in section 10b of 1951 PA
17 51, MCL 247.660b.

18 (c) "Qualified airport" means that term as defined in section
19 109 of the aeronautics code of the state of Michigan, 1945 PA 327,
20 MCL 259.109.

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

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

27 (f) "State school aid fund" means the state school aid fund
28 established in section 11 of article IX of the state constitution
29 of 1963.

1 **(g)** ~~(f)~~—"Transportation administration collection fund" means
2 the transportation administration collection fund created in
3 section 810b of the Michigan vehicle code, 1949 PA 300, MCL
4 257.810b.

5 Enacting section 1. Section 1(1)(d)(*xv*) of the general sales
6 tax act, 1933 PA 167, MCL 205.51, is intended only to clarify the
7 current status of the law in this state, is remedial in nature,
8 and, therefore, applies to a civil action pending on the effective
9 date of this amendatory act.