

1998 PUBLIC AND LOCAL ACTS

[No. 451]

(HB 5053)

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending section 1 (MCL 205.51), as amended by 1998 PA 365.

The People of the State of Michigan enact:

205.51 Definitions; unlicensed person as agent of dealer, distributor, supervisor, or employer; regarding dealer, distributor, supervisor, or employer as making sales at retail prices. [M.S.A. 7.521]

Sec. 1. (1) As used in this act:

(a) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether organized for profit or not, company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and includes the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) "Sale at retail" means a transaction by which the ownership of tangible personal property is transferred for consideration, if the transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use, or for any purpose other than for resale, or for lease, if the rental receipts are taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, in the form of tangible personal property to a person licensed under this act, or for demonstration purposes or lending or leasing to a public or parochial school offering a course in automobile driving. However, a vehicle purchased by the school shall be certified for driver education and shall not be reassigned for personal use of the school's administrative personnel. For a dealer selling a new car or truck, the exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style in accordance with the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in a calendar year for demonstration purposes.

(c) "Sale at retail" includes the sale of tangible personal property to persons directly engaged in the business of constructing, altering, repairing, or improving real estate for others except property affixed to and made a structural part of the real estate of a nonprofit hospital or nonprofit housing. A nonprofit hospital or nonprofit housing includes only the property of a nonprofit hospital or the homes or dwelling places constructed by a nonprofit housing entity qualified as exempt pursuant to section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a, the income or property of which does not directly or indirectly inure to the benefit of an individual, private stockholder, or other private person. For taxes assessed after December 31, 1990 and before January 1, 1996, as used in this subdivision, "hospital" includes, but is not limited to, an entity that meets all of the following qualifications:

1998 PUBLIC AND LOCAL ACTS

(j) Is a separately organized entity, or a group of entities sufficiently related to be considered a single employer for purposes of section 414 of the internal revenue code of 1986, the primary purpose of which is to provide medical, obstetrical, psychiatric, or surgical care or nursing. Nursing includes care provided by skilled nurses in a long-term care facility.

(ii) Prior to January 1, 1996, initiated an appeal of taxes assessed under this act on tangible personal property used to construct a facility after December 31, 1990 and before January 1, 1996, the primary purpose of which is to provide medical, obstetrical, psychiatric, or surgical care or nursing. Nursing includes a long-term care facility.

(d) "Sale at retail" includes a conditional sale, installment lease sale, or other transfer of property if title is retained as security for the purchase price but is intended to be transferred later.

(e) "Sale at retail" includes the sale of electricity, natural or artificial gas, or steam if the sale is made to the consumer or user for consumption or use rather than for resale. Sale at retail also includes the sale of a prepaid telephone calling card or a prepaid authorization number for telephone use, rather than for resale. Sale at retail also includes the reauthorization of a prepaid telephone calling card or a prepaid authorization number. Sale at retail does not include the sale of water through water mains or the sale of water delivered in bulk tanks in quantities of not less than 500 gallons.

(f) "Sale at retail" includes computer software offered for general sale to the public or software modified or adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as is basis or as an end product without modification or adaptation. Sale at retail does not include specific charges for technical support or for adapting or modifying prewritten, standard, or canned computer software programs to a purchaser's needs or equipment if those charges are separately stated and identified. Sale at retail does not include computer software originally designed for the exclusive use and special needs of the purchaser. As used in this subdivision, "computer software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result.

(g) "Sale at retail" includes the sale of tangible personal property by an industrial laundry under a sale, rental, or service agreement with a term of at least 5 days.

(h) "Sale at retail" does not include an isolated transaction by a person not licensed or required to be licensed under this act, in which tangible personal property is offered for sale, sold, transferred, and delivered by the owner.

(i) "Sale at retail" does not include a commercial advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. Sale at retail includes black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

(j) "Gross proceeds" means the amount received in money, credits, subsidies, property, or other money's worth in consideration of a sale at retail within this state, without a deduction for the cost of the property sold, the cost of material used, the cost of labor or

1998 PUBLIC AND LOCAL ACTS

service purchased, an amount paid for interest or a discount, a tax paid on cigarettes or tobacco products at the time of purchase, a tax paid on beer or liquor at the time of purchase or other expenses. Also, a deduction is not allowed for losses. Gross proceeds do not include an amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer. In a taxable sale at retail of a motor vehicle, if another motor vehicle is used as part payment of the purchase price, the value of the motor vehicle used as part payment of the purchase price shall be that value agreed to by the parties to the sale as evidenced by the signed statement executed pursuant to section 251 of the Michigan vehicle code, 1949 PA 300, MCL 257.251. A credit or refund for returned goods or a refund less an allowance for use made for a motor vehicle returned under 1986 PA 87, MCL 257.1401 to 257.1410, as certified by the manufacturer on a form provided by the department of treasury, may be deducted.

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

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

(m) "Department" means the revenue division of the department of treasury.

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

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

(p) "Textiles" means goods that are made of or incorporate woven or nonwoven fabric, including, but not limited to, clothing, shoes, hats, gloves, handkerchiefs, curtains, towels, sheets, pillows, pillow cases, tablecloths, napkins, aprons, linens, floor mops, floor mats, and thread. Textiles also include materials used to repair or construct textiles, or other goods used in the rental, sale, or cleaning of textiles.

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

This act is ordered to take immediate effect.

Approved December 29, 1998.

Filed with Secretary of State December 30, 1998.
