

EXPLANATION OF BUYERS PREMIUM SUBJECT TO SALES TAX

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Direct link to General Sales Tax Act section 205.51: <http://legislature.mi.gov/doc.aspx?mcl-205-51>

Direct link to entire act: <http://legislature.mi.gov/doc.aspx?mcl-act-167-of-1933>

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GENERAL SALES TAX ACT (EXCERPT) Act 167 of 1933

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.

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" or "retail sale" means a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent.

(c) "Gross proceeds" means sales price.

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

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

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

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

(A) 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.

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

(iv) Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property subject to the tax levied under this act from the seller to the purchaser. A seller is not liable under this act for delivery charges allocated to the delivery of exempt property.

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

(vi) Credit for any trade-in.

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

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

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

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

(D) One of the following criteria is met:

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

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

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

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

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

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

(e) "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.

(f) "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.

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

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

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

(j) "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.

History: 1933, Act 167, Imd. Eff. June 28, 1933 ;-- Am. 1935, Act 77, Imd. Eff. May 23, 1935 ;-- Am. 1939, Act 123, Imd. Eff. May 19, 1939 ;-- Am. 1939, Act 313, Imd. Eff. June 22, 1939 ;-- Am. 1941, Act 59, Imd. Eff. May 5, 1941 ;-- Am. 1941, Act 249, Imd. Eff. June 16, 1941 ;-- Am. 1943, Act 29, Imd. Eff. Mar. 24, 1943 ;-- Am. 1945, Act 259, Imd. Eff. May 25, 1945 ;-- Am. 1948, Ex. Sess., Act 30, Imd. Eff. May 10, 1948 ;-- CL 1948, 205.51 ;-- Am. 1949, Act 272, Eff. July 1, 1949 ;-- Am. 1950, 1st Ex. Sess., Act 9, Imd. Eff. May 9, 1950 ;-- Am. 1951, Act 245, Eff. Sept. 28, 1951 ;-- Am. 1952, Act 166, Imd. Eff. Apr. 24, 1952 ;-- Am. 1953, Act 204, Imd. Eff. June 10, 1953 ;-- Am. 1955, Act 236, Eff. Oct. 14, 1955 ;-- Am. 1960, Act 76, Imd. Eff. Apr. 25, 1960 ;-- Am. 1964, Act 214, Eff. Aug. 28, 1964 ;-- Am. 1970, Act 16, Eff. May 1, 1970 ;-- Am. 1973, Act 45, Imd. Eff. July 4, 1973 ;-- Am. 1976, Act 70, Imd. Eff. Apr. 5, 1976 ;-- Am. 1982, Act 218, Eff. Jan. 1, 1984 ;-- Am. 1984, Act 32, Imd. Eff. Mar. 14, 1984 ;-- Am. 1987, Act 259, Imd. Eff. Dec. 28, 1987 ;-- Am. 1993, Act 325, Eff. May 1, 1994 ;-- Am. 1994, Act 127, Eff. Aug. 1, 1994 ;-- Am. 1995, Act 209, Imd. Eff. Nov. 29, 1995 ;-- Am. 1997, Act 193, Eff. Jan. 1, 1998 ;-- Am. 1998, Act 365, Imd. Eff. Oct. 20, 1998 ;-- Am. 1998, Act 451, Imd. Eff. Dec. 30, 1998 ;-- Am. 1999, Act 116, Imd. Eff. July 14, 1999 ;-- Am. 2000, Act 390, Imd. Eff. Jan. 8, 2001 ;-- Am. 2004, Act 173, Eff. Sept. 1, 2004 ;-- Am. 2008, Act 438, Imd. Eff. Jan. 9, 2009

Compiler's Notes: Act 76 of 1984 amended Act 32 of 1984 by adding enacting section 2 to read as follows: "Section 2. (1) This amendatory act shall not apply to qualified purchase agreements, or verified purchase agreements if in relation to a refund under subsection (4), for a motor vehicle, trailer coach, or titled watercraft entered into on or before March 14, 1984 if the transfer of ownership occurs on or before February 1, 1985 and if a motor vehicle or trailer coach or titled watercraft is used as part payment of the purchase price." (2) A taxpayer may submit a claim for refund to the department if all of the following occur: "(a) A qualified purchase agreement is entered into on or before March 14, 1984." (b) The transfer of ownership occurs after March 14, 1984 and on or before 10 days after the effective date of this amendatory act that added this enacting section. "(c) The tax imposed upon the sale at retail was in an amount greater than the tax required if pursuant to this

enacting section, this amendatory act had not been applied in determining the gross proceeds upon which the tax was computed.”(d) The taxpayer who paid the excess tax provides satisfactory proof that the taxpayer has reimbursed the purchaser of the motor vehicle, trailer coach, or titled watercraft for the excess paid by the purchaser if applicable.”(3) Upon verification of a claim made pursuant to subsection (2), the department shall refund the exempt tax paid to the claimant.”(4) The department may establish procedures to refund any excess tax paid by the purchaser, directly to the purchaser, when the taxpayer has failed to claim a refund for an overpayment made by the purchaser.”(5) For the purposes of this section, “qualified purchase agreement” means a purchase agreement filed with the department on or before 10 days after the effective date of this amendatory act that added this enacting section.”Enacting section 2 of Act 116 of 1999 provides:“Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.”

Admin Rule: R 205.1 et seq. and R 205.401 et seq. of the Michigan Administrative Code.