

SENATE BILL No. 897

December 11, 2003, Introduced by Senators BERNERO, BRATER, SCHAUER and CLARKE and referred to the Committee on Finance.

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending sections 4g and 25 (MCL 205.54g and 205.75), section 4g as amended by 2000 PA 417 and section 25 as amended by 2003 PA 139.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4g. (1) A person subject to tax under this act may
2 exclude from the amount of the gross proceeds used for the
3 computation of the tax 1 or more of the following:

4 (a) Sales of prescription drugs for human use or food for
5 human consumption, except prepared food intended for immediate
6 consumption.

7 (b) The deposit on a returnable container for a beverage or
8 the deposit on a carton or case that is used for returnable
9 containers.

1 (c) Food or tangible personal property purchased with federal
2 food stamps.

3 (d) Fruit or vegetable seeds and fruit or vegetable plants if
4 purchased at a place of business authorized to accept food stamps
5 by the food and nutrition service of the United States department
6 of agriculture or a place of business that has made a complete
7 and proper application for authorization to accept food stamps
8 but has been denied authorization and provides proof of denial to
9 the department of treasury.

10 (2) "Prescription drugs for human use" means insulin or a
11 drug dispensed by a licensed pharmacist pursuant to a written
12 prescription prescribed by a licensed physician or other health
13 professional as defined by section ~~21005 of the public health~~
14 ~~code, 1978 PA 368, MCL 333.21005~~ **3501 of the insurance code of**
15 **1956, 1956 PA 218, MCL 500.3501**, for the use of a designated
16 person, or oxygen dispensed pursuant to a written prescription or
17 order issued by a licensed physician or other health professional
18 as defined in section ~~21005 of the public health code, 1978~~
19 ~~PA 368, MCL 333.21005~~ **3501 of the insurance code of 1956, 1956**
20 **PA 218, MCL 500.3501.**

21 (3) "Food for human consumption" means all food and drink
22 items, including bottled water, intended primarily for human
23 consumption, except **soft drinks and** beverages with an alcohol
24 content of 1/2 of 1% or more by volume, tobacco and tobacco
25 products, and prepared food intended for immediate consumption.
26 Food for human consumption includes live animals purchased with
27 the intent to be slaughtered for human consumption.

1 (4) "Prepared food intended for immediate consumption" means
2 a retail sale of 1 or more of the following:

3 (a) Food or drink prepared and served for immediate
4 consumption at or near the premises or ordinarily sold on a
5 takeout basis for immediate consumption either on or off the
6 premises. For the purposes of this section premises includes the
7 total space and facilities in or on which a retailer conducts his
8 or her business, including, but not limited to, parking areas for
9 the convenience of in-car consumption, outdoor tables, benches,
10 chairs, and similar conveniences.

11 (b) Food or drink furnished, prepared, or served for
12 immediate consumption at a table, chair, or counter or from a
13 tray, glass, dish, container, or other tableware.

14 (c) Food or drink arranged on a plate or platter, whether
15 intended for individual or multiple servings and whether sold by
16 the pound or by the serving; a sandwich, either hot or cold; or a
17 combination of taxable and nontaxable items when sold as a plate
18 or packaged as a meal, even though intended for more than 1
19 serving.

20 (d) Food that is cooked to the order of the purchaser, or
21 that is cooked and maintained at a temperature higher than the
22 surrounding air temperature before sale, or prepared food that is
23 sold by the piece rather than by weight or measure.

24 (e) Food or drink heated or cooled mechanically,
25 electrically, or by other artificial means to an average
26 temperature above 75 degrees Fahrenheit or below 65 degrees
27 Fahrenheit before sale and sold from a mobile facility or vending

1 machine, except milk, nonalcoholic beverages in a sealed
2 container **other than soft drinks**, and fresh fruit. A refund
3 shall not be made for any taxes paid after December 31, 1994 and
4 before January 16, 1997 for food or drink otherwise exempt under
5 this subdivision. The tax due under this act on the sale of food
6 or drink from a vending machine selling both taxable items and
7 items exempt under this subsection shall be calculated under this
8 act after December 31, 1994 based on 1 of the following as
9 determined by the taxpayer:

10 (i) Actual gross proceeds from sales at retail.

11 (ii) Forty-five percent of proceeds from the sale of items
12 subject to tax under this act or exempt from the tax levied under
13 this act, other than from the sale of carbonated beverages.

14 (5) Prepared food intended for immediate consumption does not
15 include bakery products for off-premises consumption, such as
16 doughnuts, pastry, bread, and cakes; meals eligible to be
17 purchased with federal food stamps; or nonalcoholic beverages and
18 prepared food intended for immediate consumption provided during
19 work hours for free or at a reduced rate to employees of food
20 service establishments licensed by the Michigan department of
21 agriculture. As used in this subsection, "food service
22 establishment" means that term as defined in section 1107 of the
23 food law of 2000, 2000 PA 92, MCL 289.1107.

24 (6) **"Soft drinks" means nonalcoholic beverages that contain**
25 **natural or artificial sweeteners. Soft drinks do not include**
26 **beverages that contain milk or milk products, soy, rice, or**
27 **similar milk substitutes, or greater than 50% of vegetable or**

1 **fruit juice by volume.**

2 Sec. 25. (1) All money received and collected under this
3 act shall be deposited by the department in the state treasury to
4 the credit of the general fund, except as otherwise provided in
5 this section.

6 (2) Fifteen percent of the collections of the tax imposed at
7 a rate of 4% shall be distributed to cities, villages, and
8 townships pursuant to the Glenn Steil state revenue sharing act
9 of 1971, 1971 PA 140, MCL 141.901 to 141.921.

10 (3) Sixty percent of the collections of the tax imposed at a
11 rate of 4% shall be deposited in the state school aid fund
12 established in section 11 of article IX of the state constitution
13 of 1963 and distributed as provided by law. In addition, all of
14 the collections of the tax imposed at the additional rate of 2%
15 approved by the electors March 15, 1994 shall be deposited in the
16 state school aid fund.

17 (4) For the fiscal year ending September 30, 1988 and each
18 fiscal year ending after September 30, 1988, of the 25% of the
19 collections of the general sales tax imposed at a rate of 4%
20 directly or indirectly on fuels sold to propel motor vehicles
21 upon highways, on the sale of motor vehicles and on the sale of
22 the parts and accessories of motor vehicles by new and used car
23 businesses, used car businesses, accessory dealer businesses, and
24 gasoline station businesses as classified by the department of
25 treasury remaining after the allocations and distributions are
26 made pursuant to subsections (2) and (3), the following amounts
27 shall be deposited each year into the respective funds:

1 (a) Through the fiscal year ending September 30, 2003 and for
2 the fiscal year ending September 30, 2006 and each fiscal year
3 ending after September 30, 2006, not less than 27.9% to the
4 comprehensive transportation fund. For the fiscal year ending
5 September 30, 2004 and the fiscal year ending September 30, 2005,
6 not less than 24% shall be deposited each year in the
7 comprehensive transportation fund.

8 (b) The balance to the state general fund.

9 (5) After the allocations and distributions are made pursuant
10 to subsections (2) and (3), an amount equal to the collections of
11 the tax imposed at a rate of 4% under this act from the sale at
12 retail of computer software as defined in section 1 shall be
13 deposited in the Michigan health initiative fund created in
14 section 5911 of the public health code, 1978 PA 368, MCL
15 333.5911, and shall be considered in addition to, and is not
16 intended as a replacement for any other money appropriated to the
17 department of public health. The funds deposited in the Michigan
18 health initiative fund on an annual basis shall not be less than
19 \$9,000,000.00 or more than \$12,000,000.00.

20 (6) After the allocations and distributions are made under
21 subsections (2) and (3), an amount equal to the collections of
22 the tax imposed at a rate of 4% by this act from the sale of soft
23 drinks shall be deposited in the healthy schools fund. The
24 healthy schools fund is created in the state treasury. Funds
25 from the healthy schools fund shall be used only for programs in
26 primary and secondary schools that encourage good health and
27 exercise.

1 (7) ~~—(6)—~~ The balance in the state general fund shall be
2 disbursed only on an appropriation or appropriations by the
3 legislature.