

HOUSE BILL No. 5004

September 22, 2011, Introduced by Reps. Kowall, Ananich, Horn, Olson, Liss, Heise, LeBlanc, Foster, Denby, Ouimet, Rogers, Townsend, Crawford, Lipton, Gilbert, Kandreas, Callton, Hovey-Wright, Switalski and Roy Schmidt and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
(MCL 205.51 to 205.78) by adding section 2b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2B. (1) A PERSON WHO SELLS TANGIBLE PERSONAL PROPERTY TO
2 A CUSTOMER IN THIS STATE IS PRESUMED TO BE ENGAGED IN THE BUSINESS
3 OF MAKING SALES AT RETAIL IN THIS STATE IF AN AFFILIATED PERSON,
4 OTHER THAN A COMMON CARRIER ACTING AS A COMMON CARRIER, HAS A
5 PHYSICAL LOCATION IN THIS STATE, CONDUCTS BUSINESS ACTIVITY IN THIS
6 STATE, OR IS OTHERWISE SUBJECT TO THE TAX UNDER THIS ACT OR THE USE
7 TAX ACT, 1937 PA 94, MCL 205.91 TO 205.111, AND THAT AFFILIATED
8 PERSON, DIRECTLY OR INDIRECTLY, DOES ANY OF THE FOLLOWING:

9 (A) SELLS A SIMILAR LINE OF PRODUCTS AS THE SELLER AND DOES SO
10 UNDER THE SAME BUSINESS NAME AS THE SELLER OR A SIMILAR BUSINESS

1 NAME.

2 (B) USES ITS EMPLOYEES IN THIS STATE OR FACILITIES IN THIS
3 STATE TO ADVERTISE AND PROMOTE OR FACILITATE SALES BY THE SELLER TO
4 CUSTOMERS IN THIS STATE.

5 (C) MAINTAINS AN OFFICE, DISTRIBUTION FACILITY, WAREHOUSE,
6 STORAGE PLACE, OR SIMILAR PLACE OF BUSINESS IN THIS STATE TO
7 FACILITATE THE DELIVERY OF TANGIBLE PERSONAL PROPERTY SOLD BY THE
8 SELLER TO THE SELLER'S CUSTOMERS IN THIS STATE.

9 (D) USES TRADEMARKS, SERVICE MARKS, OR TRADE NAMES IN THIS
10 STATE THAT ARE THE SAME OR SUBSTANTIALLY SIMILAR TO THOSE USED BY
11 THE SELLER.

12 (E) DELIVERS, INSTALLS, ASSEMBLES, OR PERFORMS MAINTENANCE OR
13 REPAIR SERVICES FOR THE SELLER'S CUSTOMERS IN THIS STATE.

14 (F) FACILITATES THE SALE OF TANGIBLE PERSONAL PROPERTY TO
15 CUSTOMERS IN THIS STATE BY ALLOWING THE SELLER'S CUSTOMERS IN THIS
16 STATE TO PICK UP OR RETURN TANGIBLE PERSONAL PROPERTY SOLD BY THE
17 SELLER AT AN OFFICE, DISTRIBUTION FACILITY, WAREHOUSE, STORAGE
18 PLACE, OR SIMILAR PLACE OF BUSINESS MAINTAINED BY THAT AFFILIATED
19 PERSON IN THIS STATE.

20 (G) CONDUCTS ANY OTHER ACTIVITIES IN THIS STATE THAT ARE
21 SIGNIFICANTLY ASSOCIATED WITH THE SELLER'S ABILITY TO ESTABLISH AND
22 MAINTAIN A MARKET IN THIS STATE FOR THE SELLER'S SALES OF TANGIBLE
23 PERSONAL PROPERTY TO CUSTOMERS IN THIS STATE.

24 (2) IF A SELLER OF TANGIBLE PERSONAL PROPERTY TO CUSTOMERS IN
25 THIS STATE DOES NOT HAVE AN AFFILIATED PERSON IN THIS STATE, THAT
26 SELLER IS PRESUMED TO BE ENGAGED IN THE BUSINESS OF MAKING SALES AT
27 RETAIL OF TANGIBLE PERSONAL PROPERTY IN THIS STATE IF THE SELLER

1 ENTERS INTO AN AGREEMENT WITH 1 OR MORE RESIDENTS OF THIS STATE
2 UNDER WHICH THE RESIDENT, FOR A COMMISSION OR OTHER CONSIDERATION,
3 DIRECTLY OR INDIRECTLY, REFERS POTENTIAL CUSTOMERS, WHETHER BY A
4 LINK ON AN INTERNET WEBSITE, IN-PERSON ORAL PRESENTATION, OR
5 OTHERWISE, TO THE SELLER, IF THE CUMULATIVE GROSS RECEIPTS FROM
6 SALES BY THE SELLER TO CUSTOMERS IN THIS STATE WHO ARE REFERRED TO
7 THE SELLER BY ALL RESIDENTS OF THIS STATE WITH SUCH AN AGREEMENT
8 WITH THE SELLER IS GREATER THAN \$10,000.00 DURING THE IMMEDIATELY
9 PRECEDING 12 MONTHS.

10 (3) THE PRESUMPTIONS UNDER SUBSECTIONS (1) AND (2) MAY BE
11 REBUTTED BY DEMONSTRATING THAT THE AFFILIATED PERSON, OR THE
12 RESIDENTS OF THIS STATE WITH WHOM THE SELLER HAS AN AGREEMENT, DID
13 NOT ENGAGE IN ANY SOLICITATION OR ANY OTHER ACTIVITY WITHIN THIS
14 STATE THAT WAS SIGNIFICANTLY ASSOCIATED WITH THE SELLER'S ABILITY
15 TO ESTABLISH OR MAINTAIN A MARKET IN THIS STATE FOR THE SELLER'S
16 SALES OF TANGIBLE PERSONAL PROPERTY TO CUSTOMERS IN THIS STATE.
17 EVIDENCE TO REBUT THE PRESUMPTIONS MAY CONSIST OF WRITTEN
18 STATEMENTS FROM ALL AFFILIATED PERSONS AND RESIDENTS WITH WHOM THE
19 SELLER HAS AN AGREEMENT STATING THAT THEY DID NOT ENGAGE IN ANY
20 SUCH SOLICITATION OR OTHER ACTIVITIES IN THIS STATE ON BEHALF OF
21 THE SELLER DURING THE PRECEDING YEAR IF THE STATEMENTS ARE PROVIDED
22 AND OBTAINED IN GOOD FAITH.

23 (4) AS USED IN THIS SECTION:

24 (A) "AFFILIATED PERSON" MEANS EITHER OF THE FOLLOWING:

25 (i) ANY PERSON THAT IS A PART OF THE SAME CONTROLLED GROUP OF
26 CORPORATIONS AS THE SELLER.

27 (ii) ANY OTHER PERSON OR ENTITY THAT, NOTWITHSTANDING ITS FORM

1 OF ORGANIZATION, BEARS THE SAME OWNERSHIP RELATIONSHIP TO THE
2 SELLER AS A CORPORATION THAT IS A MEMBER OF THE SAME CONTROLLED
3 GROUP OF CORPORATIONS.

4 (B) "CONTROLLED GROUP OF CORPORATIONS" MEANS THAT TERM AS
5 DEFINED IN SECTION 1563(A) OF THE INTERNAL REVENUE CODE, 26 USC
6 1563.

7 Enacting section 1. This amendatory act takes effect 30 days
8 after the date this amendatory act is enacted into law.