

# Legislative Analysis

---



## COLLECT TAX ON INTERNET SALES

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### House Bill 5004

Sponsor: Rep. Eileen Kowall

### House Bill 5005

Sponsor: Rep. Jim Ananich

Committee: Tax Policy

Complete to 10-11-11

## A SUMMARY OF HOUSE BILLS 5004 AND 5005 AS INTRODUCED 9-22-11

House Bill 5004 would amend the General Sales Tax Act to put into statute two presumptions concerning when a person selling tangible personal property is "engaged in the business of making sales at retail" in Michigan.

Under General Sales Tax Act, a tax is levied upon and collected from all persons "engaged in the business of making sales at retail," by which ownership of tangible personal property is transferred for consideration; the sales tax rate is six percent.

House Bill 5005 would make a complementary amendment to the Use Tax Act. Under the bill, a person selling tangible property would have to register with the Department of Treasury to collect the use tax, and would be personally liable for the tax, when the conditions of the presumptions are met. The use tax is levied for the privilege of using, storing, or consuming tangible personal property in this state. It is usually explained as a companion to the sales tax and applies when the sales tax has not been paid; for example, when purchases are made out of state, from catalogues, or over the internet for use or consumption in Michigan.

### Affiliated Person Presumption

A person who sells tangible personal property to a customer in Michigan is presumed to be engaged in the business of making sales at retail in Michigan in the state if an affiliated person (other than a common carrier acting as a common carrier) has a physical location in the state, conducts business activity in the state, or is otherwise subject to the sales tax or the use tax, and that affiliated person, directly or indirectly, does any of the following:

- Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name.
- Uses its employees in this state or facilities in this state to advertise and promote or facilitate sales by the seller to customers in this state.

- Maintains an office, distribution facility, warehouse, storage place, or similar place of business in Michigan to facilitate the delivery of tangible personal property sold by the seller to the seller's customers in the state.
- Uses trademarks, service marks, or trade names in Michigan that are the same or substantially similar to those used by the seller.
- Delivers, installs, assembles, or performs maintenance or repair services for the seller's customers in the state.
- Facilitates the sale of tangible personal property to customers in the state by allowing the seller's customers in the state to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that affiliated person in Michigan.
- Conducts any other activities in Michigan that are significantly associated with the seller's ability to establish and maintain a market in the state for the seller's sales of tangible personal property to customers in the state.

#### Definition of Affiliated Person

The term "affiliated person" means either (1) any person that is a part of the same controlled group of corporations as the seller, or (2) any other person or entity that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations.

#### Agreements with Residents Presumption

If a seller of tangible personal property does not have an affiliated person in Michigan, that seller is presumed to be engaged in the business of making sales at retail if the seller enters into an agreement with one or more residents of Michigan under which the resident, for a commission or other consideration, directly or indirectly, refers potential customers, whether by a link on an internet website, in-person oral presentation, or otherwise, to the seller. This would apply if the cumulative gross receipts from sales by the seller to customers who are referred to the seller by all residents of Michigan with such an agreement with the seller are greater than \$10,000 during the immediately 12 months.

#### Rebutting the Presumptions

The presumptions described above could be rebutted by demonstrating that the affiliated person, or the residents with whom the seller has an agreement, did not engage in any solicitation or any other activity within the state that was significantly associated with the seller's ability to establish or maintain a market in the state for the seller's sale of tangible personal property to customers in the state. Evidence to rebut the presumptions could

consist of written statements from all affiliated persons and residents with whom the seller had an agreement stating that they did not engage in any such solicitation or other activities in the state on behalf of the seller during the preceding year, if the statements are provided and obtained in good faith.

The two bills would take effect 30 days after being enacted into law.

**FISCAL IMPACT:**

Fiscal information will be provided as it becomes available.

Legislative Analyst: Chris Couch  
Fiscal Analyst: Rebecca Ross  
Jim Stansell

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.