

HOUSE BILL No. 5005

September 22, 2011, Introduced by Reps. Ananich, Kowall, Liss, Townsend, Hovey-Wright, Switalski, Horn, LeBlanc, Tlaib, Denby, Ouimet, Rogers, Foster, Olson, Heise, Hobbs, Cavanagh, Kandrevas, Smiley, Gilbert, Olumba, Byrum, Barnett, Roy Schmidt and Lipton and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
(MCL 205.91 to 205.111) by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 5A. (1) A PERSON WHO SELLS TANGIBLE PERSONAL PROPERTY
2 SHALL REGISTER WITH THE DEPARTMENT AND COLLECT THE TAX LEVIED UNDER
3 THIS ACT, AND IS PERSONALLY LIABLE FOR THE TAX LEVIED UNDER THIS
4 ACT AS PROVIDED IN SECTION 9, IF AN AFFILIATED PERSON, OTHER THAN A
5 COMMON CARRIER ACTING AS A COMMON CARRIER, HAS A PHYSICAL LOCATION
6 IN THIS STATE, CONDUCTS BUSINESS ACTIVITY IN THIS STATE, OR IS
7 OTHERWISE SUBJECT TO THE TAX UNDER THIS ACT OR THE GENERAL SALES
8 TAX ACT, 1933 PA 167, MCL 205.51 TO 205.78, AND THAT AFFILIATED
9 PERSON, DIRECTLY OR INDIRECTLY, DOES ANY OF THE FOLLOWING:

10 (A) SELLS A SIMILAR LINE OF PRODUCTS AS THE SELLER AND DOES SO
11 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 FOR STORAGE, USE, OR CONSUMPTION IN THIS
5 STATE.

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

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

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

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

22 (G) CONDUCTS ANY OTHER ACTIVITIES IN THIS STATE THAT ARE
23 SIGNIFICANTLY ASSOCIATED WITH THE SELLER'S ABILITY TO ESTABLISH AND
24 MAINTAIN A MARKET IN THIS STATE FOR THE SELLER'S SALES OF TANGIBLE
25 PERSONAL PROPERTY TO CUSTOMERS IN THIS STATE FOR STORAGE, USE, OR
26 CONSUMPTION IN THIS STATE.

27 (2) IF A SELLER OF TANGIBLE PERSONAL PROPERTY DOES NOT HAVE AN

1 AFFILIATED PERSON IN THIS STATE, THAT SELLER SHALL REGISTER WITH
2 THE DEPARTMENT AND COLLECT THE TAX LEVIED UNDER THIS ACT, AND IS
3 PERSONALLY LIABLE FOR THE TAX LEVIED UNDER THIS ACT AS PROVIDED IN
4 SECTION 9, IF THE SELLER ENTERS INTO AN AGREEMENT WITH 1 OR MORE
5 RESIDENTS OF THIS STATE UNDER WHICH THE RESIDENT, FOR A COMMISSION
6 OR OTHER CONSIDERATION, DIRECTLY OR INDIRECTLY, REFERS POTENTIAL
7 CUSTOMERS, WHETHER BY A LINK ON AN INTERNET WEBSITE, IN-PERSON ORAL
8 PRESENTATION, OR OTHERWISE, TO THE SELLER, IF THE CUMULATIVE GROSS
9 RECEIPTS FROM SALES BY THE SELLER FOR STORAGE, USE, OR CONSUMPTION
10 IN THIS STATE TO CUSTOMERS IN THIS STATE WHO ARE REFERRED TO THE
11 SELLER BY ALL RESIDENTS OF THIS STATE WITH SUCH AN AGREEMENT WITH
12 THE SELLER IS GREATER THAN \$10,000.00 DURING THE IMMEDIATELY
13 PRECEDING 12 MONTHS.

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

1 (4) AS USED IN THIS SECTION:

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

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

5 (ii) ANY OTHER PERSON OR ENTITY THAT, NOTWITHSTANDING ITS FORM
6 OF ORGANIZATION, BEARS THE SAME OWNERSHIP RELATIONSHIP TO THE
7 SELLER AS A CORPORATION THAT IS A MEMBER OF THE SAME CONTROLLED
8 GROUP OF CORPORATIONS.

9 (B) "CONTROLLED GROUP OF CORPORATIONS" MEANS THAT TERM AS
10 DEFINED IN SECTION 1563(A) OF THE INTERNAL REVENUE CODE, 26 USC
11 1563.

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