

SUBSTITUTE FOR
HOUSE BILL NO. 4202

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 SELLER WHO SELLS TANGIBLE PERSONAL PROPERTY TO
2 A PURCHASER IN THIS STATE IS PRESUMED TO BE ENGAGED IN THE BUSINESS
3 OF MAKING SALES AT RETAIL IN THIS STATE IF THE SELLER OR A PERSON,
4 INCLUDING AN AFFILIATED PERSON, OTHER THAN A COMMON CARRIER ACTING
5 AS A COMMON CARRIER, ENGAGES IN OR PERFORMS ANY OF THE FOLLOWING
6 ACTIVITIES IN THIS STATE:

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

1 (B) USES ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR
2 INDEPENDENT CONTRACTORS IN THIS STATE TO PROMOTE OR FACILITATE
3 SALES BY THE SELLER TO PURCHASERS IN THIS STATE.

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

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

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

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

20 (G) SHARES MANAGEMENT, BUSINESS SYSTEMS, BUSINESS PRACTICES,
21 OR EMPLOYEES WITH THE SELLER, OR IN THE CASE OF AN AFFILIATED
22 PERSON, ENGAGES IN INTERCOMPANY TRANSACTIONS WITH THE SELLER.

23 (H) CONDUCTS ANY OTHER ACTIVITIES IN THIS STATE THAT ARE
24 SIGNIFICANTLY ASSOCIATED WITH THE SELLER'S ABILITY TO ESTABLISH AND
25 MAINTAIN A MARKET IN THIS STATE FOR THE SELLER'S SALES OF TANGIBLE
26 PERSONAL PROPERTY TO PURCHASERS IN THIS STATE.

27 (2) THE PRESUMPTION UNDER SUBSECTION (1) MAY BE REBUTTED BY

1 DEMONSTRATING THAT A PERSON'S ACTIVITIES IN THIS STATE ARE NOT
2 SIGNIFICANTLY ASSOCIATED WITH THE SELLER'S ABILITY TO ESTABLISH OR
3 MAINTAIN A MARKET IN THE STATE FOR THE SELLER'S SALES OF TANGIBLE
4 PERSONAL PROPERTY TO PURCHASERS IN THIS STATE.

5 (3) IN ADDITION TO THE PRESUMPTION UNDER SUBSECTION (1), A
6 SELLER OF TANGIBLE PERSONAL PROPERTY IS PRESUMED TO BE ENGAGED IN
7 THE BUSINESS OF MAKING SALES AT RETAIL OF TANGIBLE PERSONAL
8 PROPERTY IN THIS STATE IF THE SELLER ENTERS INTO AN AGREEMENT,
9 DIRECTLY OR INDIRECTLY, WITH 1 OR MORE RESIDENTS OF THIS STATE
10 UNDER WHICH THE RESIDENT, FOR A COMMISSION OR OTHER CONSIDERATION,
11 DIRECTLY OR INDIRECTLY, REFERS POTENTIAL PURCHASERS, WHETHER BY A
12 LINK ON AN INTERNET WEBSITE, IN-PERSON ORAL PRESENTATION, OR
13 OTHERWISE, TO THE SELLER, IF ALL OF THE FOLLOWING CONDITIONS ARE
14 SATISFIED:

15 (A) THE CUMULATIVE GROSS RECEIPTS FROM SALES BY THE SELLER TO
16 PURCHASERS IN THIS STATE WHO ARE REFERRED TO THE SELLER BY ALL
17 RESIDENTS OF THIS STATE WITH AN AGREEMENT WITH THE SELLER ARE
18 GREATER THAN \$10,000.00 DURING THE IMMEDIATELY PRECEDING 12 MONTHS.

19 (B) THE SELLER'S TOTAL CUMULATIVE GROSS RECEIPTS FROM SALES TO
20 PURCHASERS IN THIS STATE EXCEED \$50,000.00 DURING THE IMMEDIATELY
21 PRECEDING 12 MONTHS.

22 (4) THE PRESUMPTION UNDER SUBSECTION (3) MAY BE REBUTTED BY
23 DEMONSTRATING THAT THE RESIDENTS OF THIS STATE WITH WHOM THE SELLER
24 HAS AN AGREEMENT DID NOT ENGAGE IN ANY SOLICITATION OR ANY OTHER
25 ACTIVITY WITHIN THIS STATE THAT WAS SIGNIFICANTLY ASSOCIATED WITH
26 THE SELLER'S ABILITY TO ESTABLISH OR MAINTAIN A MARKET IN THIS
27 STATE FOR THE SELLER'S SALES OF TANGIBLE PERSONAL PROPERTY TO

1 PURCHASERS IN THIS STATE. THE PRESUMPTION UNDER SUBSECTION (3)
2 SHALL BE CONSIDERED REBUTTED BY EVIDENCE OF ALL OF THE FOLLOWING:

3 (A) WRITTEN AGREEMENTS PROHIBITING ALL OF THE RESIDENTS WITH
4 AN AGREEMENT WITH THE SELLER FROM ENGAGING IN ANY SOLICITATION
5 ACTIVITIES IN THIS STATE ON BEHALF OF THE SELLER.

6 (B) WRITTEN STATEMENTS FROM ALL OF THE RESIDENTS WITH AN
7 AGREEMENT WITH THE SELLER STATING THAT THE RESIDENT REPRESENTATIVES
8 DID NOT ENGAGE IN ANY SOLICITATION OR OTHER ACTIVITIES IN THIS
9 STATE ON BEHALF OF THE SELLER DURING THE IMMEDIATELY PRECEDING 12
10 MONTHS, IF THE STATEMENTS ARE PROVIDED AND OBTAINED IN GOOD FAITH.

11 (5) AN AGREEMENT UNDER WHICH A SELLER PURCHASES ADVERTISEMENTS
12 FROM A PERSON OR PERSONS IN THIS STATE TO BE DELIVERED THROUGH
13 TELEVISION, RADIO, PRINT, THE INTERNET, OR ANY OTHER MEDIUM IS NOT
14 AN AGREEMENT DESCRIBED IN SUBSECTION (3) UNLESS THE ADVERTISEMENT
15 REVENUE PAID TO THE PERSON OR PERSONS IN THIS STATE CONSISTS OF
16 COMMISSIONS OR OTHER CONSIDERATION THAT IS BASED UPON COMPLETED
17 SALES OF TANGIBLE PERSONAL PROPERTY.

18 (6) THIS SECTION APPLIES TO TRANSACTIONS OCCURRING ON OR AFTER
19 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION
20 AND WITHOUT REGARD TO THE DATE THE SELLER AND THE RESIDENT ENTERED
21 INTO AN AGREEMENT DESCRIBED IN SUBSECTION (3). THE 12 MONTHS BEFORE
22 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION
23 ARE INCLUDED AS PART OF THE IMMEDIATELY PRECEDING 12 MONTHS FOR
24 PURPOSES OF SUBSECTION (3).

25 (7) AS USED IN THIS SECTION:

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

27 (i) ANY PERSON THAT IS A PART OF THE SAME CONTROLLED GROUP OF

1 CORPORATIONS AS THE SELLER.

2 (ii) ANY OTHER PERSON THAT, NOTWITHSTANDING ITS FORM OF
3 ORGANIZATION, BEARS THE SAME OWNERSHIP RELATIONSHIP TO THE SELLER
4 AS A CORPORATION THAT IS A MEMBER OF THE SAME CONTROLLED GROUP OF
5 CORPORATIONS.

6 (B) "CONTROLLED GROUP OF CORPORATIONS" MEANS THAT TERM AS
7 DEFINED IN SECTION 1563(A) OF THE INTERNAL REVENUE CODE, 26 USC
8 1563.

9 Enacting section 1. This amendatory act takes effect October
10 1, 2013.