



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

**TAX LIABILITY/NEXUS OF
OUT-OF-STATE BUSINESSES**

House Bill 4571
Sponsor: Rep. Jack Minore
Committee: Tax Policy

Complete to 4-23-03

A SUMMARY OF HOUSE BILL 4571 AS INTRODUCED 4-10-03

The bill would amend the Revenue Act to specify that a person (i.e., a business enterprise) subject to a state tax and an out-of-state affiliate of that enterprise would be jointly and severally liable for any tax administered under the act if one or more listed criteria were met. This would apply notwithstanding the form of business organization or the existence of an agency relationship or the lack of an agency relationship. The bill would apply for tax years beginning on or after January 1, 2004 for taxes administered under the Revenue Act, except for taxes collected under the Use Tax Act. The criteria are:

- The person and the out-of-state affiliate use an identical or substantially similar name, trade name, trademark, or goodwill to develop, promote, or maintain sales.
- The person and the out-of-state affiliate pay for each other's services in whole or in part contingent on the volume or value of sales.
- The person and the out-of-state affiliate share or exchange value in the operation of their businesses.
- The person and the out-of-state affiliate substantially coordinate common business plans.

Under the bill, an out-of-state affiliate subject to a tax administered under the Revenue Act would be considered to have substantial nexus with Michigan for any tax administered under the act if the affiliate met one or more of the criteria cited above. This would be the case notwithstanding the form of business organization or the existence of an agency relationship or the lack of an agency relationship.

The term "out-of-state affiliate of a person subject to a tax administered under [the Revenue Act]" would mean any out-of-state person who directly, indirectly, or constructively owns or controls, is owned or controlled by, or is under common ownership or control with a person subject to a tax under the act.

The bill would also state that "Nothing in this [bill] shall be interpreted to limit the taxing jurisdiction of this state under the constitution of the United States".

MCL205.30d

Analyst: C. Couch

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