

HOUSE BILL No. 4948

September 13, 2011, Introduced by Rep. Gilbert and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 621 (MCL 206.621), as added by 2011 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 621. (1) Except as otherwise provided in this part, ~~or~~
2 ~~under subsection (2),~~ a taxpayer has substantial nexus in this
3 state and is subject to the tax imposed under this part if the
4 taxpayer has a physical presence in this state for a period of more
5 than 1 day during the tax year, if the taxpayer actively solicits
6 sales in this state and has gross receipts of \$350,000.00 or more
7 sourced to this state, or if the taxpayer has an ownership interest
8 or a beneficial interest in a flow-through entity, directly, or
9 indirectly through 1 or more other flow-through entities, that has
10 substantial nexus in this state.

1 ~~—— (2) For purposes of this section, "actively solicits" shall be~~
2 ~~defined by the department through written guidance that shall be~~
3 ~~applied prospectively.~~

4 (2) ~~(3)~~ As used in this section: ~~,"physical~~

5 (A) "ACTIVELY SOLICITS" MEANS EITHER OF THE FOLLOWING:

6 (i) SPEECH, CONDUCT, OR ACTIVITY THAT IS PURPOSEFULLY DIRECTED
7 AT OR INTENDED TO REACH PERSONS WITHIN THIS STATE AND THAT
8 EXPLICITLY OR IMPLICITLY INVITES AN ORDER FOR A PURCHASE OR SALE.

9 (ii) SPEECH, CONDUCT, OR ACTIVITY THAT IS PURPOSEFULLY DIRECTED
10 AT OR INTENDED TO REACH PERSONS WITHIN THIS STATE THAT NEITHER
11 EXPLICITLY NOR IMPLICITLY INVITES AN ORDER FOR A PURCHASE OR SALE,
12 BUT IS ENTIRELY ANCILLARY TO REQUESTS FOR AN ORDER FOR A PURCHASE
13 OR SALE.

14 (B) "PHYSICAL presence" means any activity conducted by the
15 taxpayer or on behalf of the taxpayer by the taxpayer's employee,
16 agent, or independent contractor acting in a representative
17 capacity. Physical presence does not include the activities of
18 professionals providing services in a professional capacity or
19 other service providers if the activity is not significantly
20 associated with the taxpayer's ability to establish and maintain a
21 market in this state.

22 Enacting section 1. This amendatory act takes effect January
23 1, 2012.