

SENATE BILL No. 658

October 31, 2013, Introduced by Senators ANANICH and WHITMER and referred to the Committee on Economic Development.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
(MCL 205.51 to 205.78) by adding section 3a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3A. (1) SUBJECT TO SUBSECTION (2), A PERSON IS PRESUMED
2 TO BE ENGAGED IN THE BUSINESS OF MAKING SALES AT RETAIL IN THIS
3 STATE IF ANY OF THE FOLLOWING CONDITIONS ARE SATISFIED:

4 (A) ANY OTHER PERSON, OTHER THAN A COMMON CARRIER ACTING IN
5 ITS CAPACITY AS A COMMON CARRIER, THAT HAS SUBSTANTIAL NEXUS WITH
6 THIS STATE DOES ANY OF THE FOLLOWING:

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

9 (ii) MAINTAINS AN OFFICE, DISTRIBUTION FACILITY, WAREHOUSE,
10 STORAGE PLACE, OR SIMILAR PLACE OF BUSINESS IN THIS STATE TO
11 FACILITATE THE DELIVERY OF PROPERTY OR SERVICES SOLD BY THE PERSON

1 TO THE PERSON'S CUSTOMERS.

2 (iii) USES TRADEMARKS, SERVICE MARKS, OR TRADE NAMES IN THIS
3 STATE THAT ARE THE SAME OR SUBSTANTIALLY SIMILAR TO THOSE USED BY
4 THE PERSON.

5 (iv) DELIVERS, INSTALLS, ASSEMBLES, OR PERFORMS MAINTENANCE
6 SERVICES FOR THE PERSON'S CUSTOMERS WITHIN THIS STATE.

7 (v) FACILITATES THE PERSON'S DELIVERY OF PROPERTY TO CUSTOMERS
8 IN THIS STATE BY ALLOWING THE PERSON'S CUSTOMERS TO PICK UP
9 PROPERTY SOLD BY THE PERSON AT AN OFFICE, DISTRIBUTION FACILITY,
10 WAREHOUSE, STORAGE PLACE, OR SIMILAR PLACE OF BUSINESS MAINTAINED
11 BY THE PERSON IN THIS STATE.

12 (vi) CONDUCTS ANY OTHER ACTIVITIES IN THIS STATE THAT ARE
13 SIGNIFICANTLY ASSOCIATED WITH THE PERSON'S ABILITY TO ESTABLISH AND
14 MAINTAIN A MARKET IN THIS STATE FOR THE PERSON'S SALES.

15 (B) ANY AFFILIATED PERSON HAS SUBSTANTIAL NEXUS WITH THIS
16 STATE.

17 (2) THE PRESUMPTIONS IN SUBSECTION (1) MAY BE REBUTTED BY
18 DEMONSTRATING THAT THE OTHER PERSON'S OR AFFILIATED PERSON'S
19 ACTIVITIES IN THIS STATE ARE NOT SIGNIFICANTLY ASSOCIATED WITH THE
20 PERSON'S ABILITY TO ESTABLISH OR MAINTAIN A MARKET IN THIS STATE
21 FOR THE PERSON'S SALES.

22 (3) NOTWITHSTANDING SUBSECTION (1) AND EXCEPT AS OTHERWISE
23 PROVIDED IN SUBSECTION (4), BEGINNING 90 DAYS AFTER THE EFFECTIVE
24 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, A PERSON IS
25 PRESUMED TO BE ENGAGED IN THE BUSINESS OF MAKING SALES AT RETAIL IN
26 THIS STATE IF THE PERSON ENTERS INTO AN AGREEMENT WITH 1 OR MORE
27 OTHER PERSONS UNDER WHICH THE OTHER PERSON, FOR A COMMISSION OR

1 OTHER CONSIDERATION, WHILE WITHIN THIS STATE DIRECTLY OR INDIRECTLY
2 REFERS POTENTIAL CUSTOMERS, WHETHER BY A LINK ON AN INTERNET
3 WEBSITE, AN IN-PERSON ORAL PRESENTATION, TELEMARKETING, OR BY ANY
4 OTHER MEANS, TO THE PERSON, IF THE CUMULATIVE GROSS RECEIPTS FROM
5 SALES BY THE PERSON TO CUSTOMERS IN THIS STATE WHO ARE REFERRED TO
6 THE PERSON BY ALL OTHER PERSONS WITHIN THIS STATE WITH SUCH AN
7 AGREEMENT WITH THE PERSON ARE MORE THAN \$10,000.00 DURING THE
8 IMMEDIATELY PRECEDING 12 MONTHS. THIS SUBSECTION SHALL APPLY TO A
9 PERSON WITHOUT REGARD AS TO THE DATE THE PERSON AND THE OTHER
10 PERSON ENTERED INTO THE AGREEMENT. AS USED IN THIS SECTION, "THE
11 IMMEDIATELY PRECEDING 12 MONTHS" INCLUDES THE 12 MONTHS THAT
12 OCCURRED BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
13 THIS SECTION.

14 (4) THE PRESUMPTION IN SUBSECTION (3) MAY BE REBUTTED BY
15 SUBMITTING PROOF THAT THE OTHER PERSONS WITH WHOM THE PERSON HAS AN
16 AGREEMENT DID NOT ENGAGE IN ANY ACTIVITY WITHIN THIS STATE THAT WAS
17 SIGNIFICANTLY ASSOCIATED WITH THE PERSON'S ABILITY TO ESTABLISH OR
18 MAINTAIN THE PERSON'S MARKET IN THIS STATE DURING THE IMMEDIATELY
19 PRECEDING 12 MONTHS. SUCH PROOF MAY INCLUDE, BUT IS NOT LIMITED TO,
20 SWORN WRITTEN STATEMENTS FROM ALL OF THE OTHER PERSONS IN THIS
21 STATE WITH WHOM THE PERSON HAS AN AGREEMENT STATING THAT THEY DID
22 NOT ENGAGE IN ANY SOLICITATION IN THIS STATE ON BEHALF OF THE
23 PERSON DURING THE IMMEDIATELY PRECEDING 12 MONTHS, IF SUCH
24 STATEMENTS ARE PROVIDED AND OBTAINED IN GOOD FAITH.

25 (5) ANY RULING, AGREEMENT, OR CONTRACT, WHETHER WRITTEN OR
26 ORAL, EXPRESS OR IMPLIED, BETWEEN A PERSON AND THIS STATE'S
27 EXECUTIVE BRANCH OR ANY OTHER STATE AGENCY OR DEPARTMENT, STATING,

1 AGREEING, OR RULING THAT THE PERSON IS NOT REQUIRED TO COLLECT
2 SALES TAX IN THIS STATE DESPITE THE PRESENCE OF A WAREHOUSE,
3 DISTRIBUTION CENTER, OR FULFILLMENT CENTER IN THIS STATE THAT IS
4 OWNED OR OPERATED BY THE PERSON OR AN AFFILIATED PERSON IS NULL AND
5 VOID UNLESS SPECIFICALLY APPROVED BY A MAJORITY VOTE OF THE HOUSE
6 OF REPRESENTATIVES AND THE SENATE.

7 (6) IF ANY PERSON SELLS TANGIBLE PERSONAL PROPERTY TO THIS
8 STATE, A STATE DEPARTMENT, A STATE AGENCY, OR AN AGENT OF THIS
9 STATE, A STATE DEPARTMENT, OR STATE AGENCY, THAT PERSON AND ANY
10 AFFILIATED PERSON SHALL, AS A PREREQUISITE FOR ANY SUCH SALE,
11 OBTAIN A LICENSE AS REQUIRED UNDER SECTION 3 AND COMPLY WITH ALL
12 REQUIREMENTS OF THIS ACT.

13 (7) AS USED IN THIS SECTION:

14 (A) "AFFILIATED PERSON" MEANS ANY PERSON THAT IS A MEMBER OF
15 THE SAME CONTROLLED GROUP OF CORPORATIONS AS THE SELLER OR IS A
16 MEMBER OF ANY OTHER ENTITY THAT, NOTWITHSTANDING ITS FORM OF
17 ORGANIZATION, BEARS THE SAME OWNERSHIP RELATIONSHIP TO THE SELLER
18 AS A CORPORATION THAT IS A MEMBER OF THE SAME CONTROLLED GROUP OF
19 CORPORATIONS.

20 (B) "CONTROLLED GROUP OF CORPORATIONS" MEANS THAT TERM AS
21 DEFINED IN SECTION 1563(A) OF THE INTERNAL REVENUE CODE, 26 USC
22 1563.