

SUBSTITUTE FOR
HOUSE BILL NO. 4203

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 SELLER WHO SELLS TANGIBLE PERSONAL PROPERTY IS
2 PRESUMED TO HAVE NEXUS WITH THIS STATE AND SHALL REGISTER WITH THE
3 DEPARTMENT AND COLLECT THE TAX LEVIED UNDER THIS ACT IF THE SELLER
4 OR A PERSON, INCLUDING AN AFFILIATED PERSON, OTHER THAN A COMMON
5 CARRIER ACTING AS A COMMON CARRIER, ENGAGES IN OR PERFORMS ANY OF
6 THE FOLLOWING 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.

10 (B) USES ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR

1 INDEPENDENT CONTRACTORS IN THIS STATE TO PROMOTE OR FACILITATE
2 SALES BY THE SELLER TO PURCHASERS IN THIS STATE.

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

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

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

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

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

22 (H) 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 PURCHASERS IN THIS STATE FOR STORAGE, USE, OR
26 CONSUMPTION 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 HAVE NEXUS IN
7 THIS STATE AND SHALL REGISTER WITH THE DEPARTMENT AND COLLECT THE
8 TAX LEVIED UNDER THIS ACT 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 FOR
16 STORAGE, USE, OR CONSUMPTION IN THIS STATE TO PURCHASERS IN THIS
17 STATE WHO ARE REFERRED TO THE SELLER BY ALL RESIDENTS OF THIS STATE
18 WITH AN AGREEMENT WITH THE SELLER ARE GREATER THAN \$10,000.00
19 DURING THE IMMEDIATELY PRECEDING 12 MONTHS.

20 (B) THE SELLER'S TOTAL CUMULATIVE GROSS RECEIPTS FROM SALES
21 FOR STORAGE, USE, OR CONSUMPTION TO PURCHASERS IN THIS STATE EXCEED
22 \$50,000.00 DURING THE IMMEDIATELY PRECEDING 12 MONTHS.

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

1 STATE FOR THE SELLER'S SALES OF TANGIBLE PERSONAL PROPERTY TO
2 PURCHASERS IN THIS STATE FOR STORAGE, USE, OR CONSUMPTION IN THIS
3 STATE. THE PRESUMPTION UNDER SUBSECTION (3) SHALL BE CONSIDERED
4 REBUTTED BY EVIDENCE OF ALL OF THE FOLLOWING:

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

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

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

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

27 (7) AS USED IN THIS SECTION:

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

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

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

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

11 Enacting section 1. This amendatory act takes effect October
12 1, 2013.