

# SENATE BILL No. 659

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

A bill to amend 1937 PA 94, entitled  
"Use tax act,"  
(MCL 205.91 to 205.111) by adding section 3g.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           SEC. 3G. (1) SUBJECT TO SUBSECTION (2), A SELLER IS PRESUMED  
2 TO BE REQUIRED TO COLLECT AND REMIT THE TAX UNDER THIS ACT IF ANY  
3 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 SELLER 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 SELLER

1 TO THE SELLER'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 SELLER.

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

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

12 (vi) CONDUCTS ANY OTHER ACTIVITIES IN THIS STATE THAT ARE  
13 SIGNIFICANTLY ASSOCIATED WITH THE SELLER'S ABILITY TO ESTABLISH AND  
14 MAINTAIN A MARKET IN THIS STATE FOR THE SELLER'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 SELLER'S ABILITY TO ESTABLISH OR MAINTAIN A MARKET IN THIS STATE  
21 FOR THE SELLER'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 SELLER IS  
25 PRESUMED TO BE REQUIRED TO COLLECT AND REMIT THE TAX UNDER THIS ACT  
26 IF THE SELLER ENTERS INTO AN AGREEMENT WITH 1 OR MORE PERSONS UNDER  
27 WHICH THE PERSON, FOR A COMMISSION OR OTHER CONSIDERATION, WHILE

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

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

24 (5) ANY RULING, AGREEMENT, OR CONTRACT, WHETHER WRITTEN OR  
25 ORAL, EXPRESS OR IMPLIED, BETWEEN A SELLER AND THIS STATE'S  
26 EXECUTIVE BRANCH OR ANY OTHER STATE AGENCY OR DEPARTMENT, STATING,  
27 AGREEING, OR RULING THAT THE SELLER IS NOT REQUIRED TO COLLECT AND

1 REMIT THE TAX UNDER THIS ACT DESPITE THE PRESENCE OF A WAREHOUSE,  
2 DISTRIBUTION CENTER, OR FULFILLMENT CENTER IN THIS STATE THAT IS  
3 OWNED OR OPERATED BY THE SELLER OR AN AFFILIATED PERSON IS NULL AND  
4 VOID UNLESS SPECIFICALLY APPROVED BY A MAJORITY VOTE OF THE HOUSE  
5 OF REPRESENTATIVES AND THE SENATE.

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

11 (7) AS USED IN THIS SECTION:

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

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