

SENATE BILL No. 325

March 1, 2007, Introduced by Senators SWITALSKI, SCHAUER and THOMAS and referred to the Committee on Finance.

A bill to amend 1941 PA 122, entitled

"An act to establish the revenue collection duties of the department of treasury; to prescribe its powers and duties as the revenue collection agency of this state; to prescribe certain powers and duties of the state treasurer; to establish the collection duties of certain other state departments for money or accounts owed to this state; to regulate the importation, stamping, and disposition of certain tobacco products; to provide for the transfer of powers and duties now vested in certain other state boards, commissions, departments, and offices; to prescribe certain duties of and require certain reports from the department of treasury; to provide procedures for the payment, administration, audit, assessment, levy of interests or penalties on, and appeals of taxes and tax liability; to prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; to prescribe penalties and provide remedies; and to declare the effect of this act,"

(MCL 205.1 to 205.31) by adding section 30d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 30D. (1) A PERSON HAS SUBSTANTIAL NEXUS FOR A TAX

2 ADMINISTERED UNDER THIS ACT IF THE PERSON AND AN IN-STATE BUSINESS

1 ARE RELATED PARTIES AND IF 1 OR MORE OF THE FOLLOWING APPLY:

2 (A) THE PERSON AND THE IN-STATE BUSINESS USE AN IDENTICAL OR
3 SUBSTANTIALLY SIMILAR NAME, TRADE NAME, TRADEMARK, OR GOODWILL, TO
4 DEVELOP, PROMOTE, OR MAINTAIN SALES.

5 (B) THE PERSON AND THE IN-STATE BUSINESS PAY FOR EACH OTHER'S
6 SERVICES IN WHOLE OR IN PART CONTINGENT UPON THE VOLUME OR VALUE OF
7 SALES.

8 (C) THE PERSON AND THE IN-STATE BUSINESS SHARE A COMMON
9 BUSINESS PLAN OR SUBSTANTIALLY COORDINATE THEIR BUSINESS PLANS.

10 (2) A PERSON HAS A SUBSTANTIAL NEXUS IF 1 OR MORE OF THE
11 CONDITIONS UNDER SUBSECTION (1) ARE MET, NOTWITHSTANDING THE
12 EXISTENCE OF AN AGENCY RELATIONSHIP OR LACK OF AN AGENCY
13 RELATIONSHIP WITH THE IN-STATE BUSINESS AND WITHOUT REGARD TO ITS
14 FORM OF BUSINESS ORGANIZATION.

15 (3) TWO ENTITIES ARE RELATED PARTIES UNDER THIS SECTION IF 1
16 OF THE ENTITIES MEETS 1 OR MORE OF THE FOLLOWING TESTS WITH RESPECT
17 TO THE OTHER ENTITY:

18 (A) ONE ENTITY IS A CORPORATION AND THE OTHER ENTITY AND ANY
19 PARTY, FOR WHICH SECTION 318 OF THE INTERNAL REVENUE CODE, 26 USC
20 318, REQUIRES AN ATTRIBUTION OF OWNERSHIP OF STOCK FROM THAT PARTY
21 TO THE ENTITY, OWN DIRECTLY, INDIRECTLY, BENEFICIALLY, OR
22 CONSTRUCTIVELY AT LEAST 50% OF THE VALUE OF THE CORPORATION'S
23 OUTSTANDING STOCK.

24 (B) ONE OR BOTH ENTITIES IS A LIMITED LIABILITY COMPANY,
25 PARTNERSHIP, ESTATE, OR TRUST, NONE OF WHICH IS TREATED AS A
26 CORPORATION FOR FEDERAL INCOME TAX PURPOSES, AND THAT LIMITED
27 LIABILITY COMPANY, PARTNERSHIP, ESTATE, OR TRUST AND ITS MEMBERS,

1 PARTNERS, OR BENEFICIARIES OWN DIRECTLY, INDIRECTLY, BENEFICIALLY,
2 OR CONSTRUCTIVELY, IN THE AGGREGATE, AT LEAST 50% OF THE PROFITS,
3 CAPITAL, STOCK, OR VALUE OF THE OTHER ENTITY OR BOTH ENTITIES.

4 (C) ONE ENTITY IS RELATED TAXPAYER TO THE OTHER ENTITY UNDER
5 SECTION 267 OF THE INTERNAL REVENUE CODE, 26 USC 267.

6 (4) FOR PURPOSES OF THIS SECTION, AN IN-STATE BUSINESS IS A
7 BUSINESS THAT MAINTAINS 1 OR MORE LOCATIONS WITHIN THIS STATE OR A
8 BUSINESS THAT HAS 1 OR MORE EMPLOYEES THAT CONDUCT BUSINESS
9 ACTIVITY WITHIN THIS STATE.

10 (5) THE PROVISIONS OF THIS SECTION ARE NOT EXCLUSIVE AND SHALL
11 NOT, SUBJECT TO DUE PROCESS AND THE COMMERCE CLAUSE OF THE UNITED
12 STATES CONSTITUTION, BE CONSTRUED TO LIMIT THE EXTENT OF THIS
13 STATE'S JURISDICTION TO IMPOSE A TAX ADMINISTERED UNDER THIS ACT.