

# SENATE BILL No. 415

April 29, 2003, Introduced by Senator EMERSON 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 the state; to prescribe certain powers and duties of the state treasurer; 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) Notwithstanding its form of business  
2 organization or the existence of an agency relationship or lack  
3 of an agency relationship, a person subject to a tax administered

1 under this act and an out-of-state affiliate of that person that  
2 meet 1 or more of the following criteria are jointly and  
3 severally liable for any tax administered under this act:

4 (a) The person and the out-of-state affiliate of that person  
5 use an identical or substantially similar name, trade name,  
6 trademark, or goodwill to develop, promote, or maintain sales.

7 (b) The person and the out-of-state affiliate of that person  
8 pay for each other's services in whole or in part contingent upon  
9 the volume or value of sales.

10 (c) The person and the out-of-state affiliate of that person  
11 share or exchange value in the operation of their businesses.

12 (d) The person and the out-of-state affiliate of that person  
13 substantially coordinate common business plans.

14 (2) Notwithstanding its form of business organization or the  
15 existence of an agency relationship or lack of an agency  
16 relationship, an out-of-state affiliate of a person subject to a  
17 tax administered under this act has substantial nexus with this  
18 state for any tax administered under this act if the out-of-state  
19 affiliate meets 1 or more of the criteria in subsection (1).

20 (3) As used in this section, "out-of-state affiliate of a  
21 person subject to a tax administered under this act" means any  
22 out-of-state person who directly, indirectly, or constructively  
23 owns or controls, is owned or controlled by, or is under common  
24 ownership or control with a person subject to a tax administered  
25 under this act.

26 (4) Nothing in this section shall be interpreted to limit the  
27 taxing jurisdiction of this state under the constitution of the

1 United States.

2 (5) This section applies for taxes collected under the use  
3 tax act, 1937 PA 94, MCL 205.91 to 205.111, beginning October 1,  
4 2003.

5 (6) This section applies for tax years that begin on or after  
6 January 1, 2004 for taxes administered under this act, other than  
7 taxes collected under the use tax act, 1937 PA 94, MCL 205.91 to  
8 205.111.