



**Substitute Senate Bill No. 1232**

**Public Act No. 05-260**

**AN ACT CONCERNING CERTAIN TAXES ADMINISTERED BY THE  
DEPARTMENT OF REVENUE SERVICES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 12-285b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2005*):

(a) Every tobacco product manufacturer, as defined in section 4-28h, selling cigarettes to consumers within this state, whether directly or through a distributor, dealer, or similar intermediary or intermediaries, shall secure a cigarette manufacturer's license from the Commissioner of Revenue Services. Such license shall be renewable annually. The annual fee for a cigarette manufacturer's license shall be five thousand dollars. The commissioner shall not include or retain in the directory of tobacco product manufacturers developed and maintained in accordance with section 4-28m, as amended by this act, the name or brand families of any tobacco product manufacturer that has failed to secure and retain a cigarette manufacturer's license in accordance with this section.

Sec. 2. Subdivision (20) of subsection (a) of section 12-213 of the general statutes is repealed and the following is substituted in lieu

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thereof (*Effective from passage and applicable to taxable years commencing on or after January 1, 2005*):

(20) (A) "Carrying on or doing business" means and includes each and every act, power or privilege exercised or enjoyed in this state, as an incident to, or by virtue of, the powers and privileges acquired by the nature of any organization whether the form of existence is corporate, associate, joint stock company or fiduciary, and includes the direct or indirect engaging in, transacting or conducting of activity in this state by an electric supplier, as defined in section 16-1, or generation entity or affiliate, as defined in section 16-1, for the purpose of establishing or maintaining a market for the sale of electricity or of electric generation services, as defined in section 16-1, to end use customers located in this state through the use of the transmission or distribution facilities of an electric distribution company, as defined in section 16-1, or, until unbundled in accordance with section 16-244e, electric company, as defined in section 16-1;

(B) A company that has contracted with a commercial printer for printing and distribution of printed material shall not be deemed to be carrying on or doing business in this state because of (i) the ownership or leasing by that company of tangible or intangible personal property located at the premises of the commercial printer in this state, (ii) the sale by that company of property of any kind produced or processed at and shipped or distributed from the premises of the commercial printer in this state, (iii) the activities of that company's employees or agents at the premises of the commercial printer in this state, which activities relate to quality control, distribution or printing services performed by the printer, or (iv) the activities of any kind performed by the commercial printer in this state for or on behalf of that company;

(C) A company that participates in a trade show or shows at the convention center, as defined in subdivision (3) of section 32-600, shall

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not be deemed to be carrying on or doing business in this state, regardless of whether the company has employees or other staff present at such trade shows, provided such company's activity at such trade shows is limited to displaying goods or promoting services, no sales are made, any orders received are sent outside this state for acceptance or rejection and are filled from outside this state, and provided further that such participation is not more than fourteen days, or part thereof, in the aggregate during the company's income year for federal income tax purposes.

Sec. 3. Subsection (b) of section 12-293a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Each licensed distributor or dealer who owns or operates [more than five] cigarette vending machines shall file a report with the Commissioner of Revenue Services, [on or before the fifteenth day of each month, a report] at such time and in such form as the commissioner may prescribe. [for the calendar month immediately preceding, which report shall disclose the number of cigarette vending machines owned, operated, acquired and disposed of by him, together with such other information as the commissioner shall require. Each licensed distributor or dealer who owns or operates not more than five cigarette vending machines shall file such report with the commissioner semiannually, at such time and in such form as the commissioner may prescribe.]

Sec. 4. Section 12-330d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005, and applicable to returns for periods commencing on or after October 1, 2005*):

(a) [Each] Except as otherwise provided in subsection (b) of this section, each licensed distributor and each licensed unclassified importer shall file with the commissioner, on or before the twenty-fifth

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day of each month, a report for the calendar month immediately preceding in such form and containing such information as the commissioner may prescribe. The return shall be accompanied by a payment of the amount of the tax shown to be due thereon. [The commissioner may, by regulations adopted in accordance with chapter 54, require that each distributor and unclassified importer report the names and addresses of its customers, if any, annually, with changes in such lists to be reported to the commissioner monthly not later than the tenth day of each month.] If any person fails to pay the amount of tax reported due on its report within the time specified under this section, there shall be imposed a penalty equal to ten per cent of such amount due and unpaid, or fifty dollars, whichever is greater. Such amount shall bear interest at the rate of one per cent per month or fraction thereof, from the due date of such tax until the date of payment. Subject to the provisions of section 12-3a, the commissioner may waive all or part of the penalties provided under this chapter when it is proven to the commissioner's satisfaction that the failure to pay any tax was due to reasonable cause and was not intentional or due to neglect.

(b) (1) Each licensed distributor who does not acquire untaxed tobacco products shall file with the commissioner, on or before the twenty-fifth day of each July, a report for the twelve-month period ending the June thirtieth immediately preceding, in such form and containing such information as the commissioner may prescribe, and bearing notice to the effect that false statements made in such report are punishable. As used in this section, "untaxed tobacco products" means tobacco products other than taxed tobacco products; and "taxed tobacco products" means tobacco products which are acquired from a licensed distributor who does acquire untaxed tobacco products and who is subject to and required to pay the tax imposed under this chapter on such tobacco products. Each distributor required to file an annual report shall maintain records that detail (A) the persons from

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whom, the quantities in which and the dates on which tobacco products were acquired by the distributor; (B) the persons to whom, the quantities in which and the dates on which such tobacco products were sold by the distributor; and (C) any other information deemed necessary by the commissioner.

(2) If, in the commissioner's discretion, the enforcement of this chapter would not be adversely affected, the commissioner, by regulation adopted pursuant to this chapter, may exempt unclassified importers from the licensing requirements of section 12-330b and from the monthly reporting requirements of this section and, in lieu thereof, may require unclassified importers having untaxed tobacco products in their possession, not later than twenty-four hours after coming into possession of such untaxed tobacco products, (A) to file a report with the commissioner in such form as the commissioner prescribes and bearing notice to the effect that false statements made in such report are punishable, and (B) to pay the amount of tax shown to be due thereon.

Sec. 5. Subdivision (15) of subsection (a) of section 12-407 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to taxable years commencing on or after January 1, 2005*):

(15) (A) "Engaged in business in the state" means and includes but shall not be limited to the following acts or methods of transacting business: (i) Selling in this state, or any activity in this state in connection with selling in this state, tangible personal property for use, storage or consumption within the state; (ii) engaging in the transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less; (iii) rendering in this state any service described in any of the subparagraphs of subdivision (2) of this subsection; (iv) maintaining, occupying or using, permanently or temporarily, directly or indirectly,

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through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage point or other place of business or having any representative, agent, salesman, canvasser or solicitor operating in this state for the purpose of selling, delivering or taking orders; (v) notwithstanding the fact that retail sales are made from outside this state to a destination within this state and that a place of business is not maintained in this state, engaging in regular or systematic solicitation of sales of tangible personal property in this state by the display of advertisements on billboards or other outdoor advertising in this state, by the distribution of catalogs, periodicals, advertising flyers or other advertising by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system, for the purpose of effecting retail sales of tangible personal property, provided one hundred or more retail sales from outside this state to destinations within this state are made during the twelve-month period ended on the September thirtieth immediately preceding the monthly or quarterly period with respect to which liability for tax under this chapter is determined; (vi) being owned or controlled, either directly or indirectly, by a retailer engaged in business in this state which is the same as or similar to the line of business in which the retailer so owned or controlled is engaged; (vii) being owned or controlled, either directly or indirectly, by the same interests that own or control, either directly or indirectly, a retailer engaged in business in this state which is the same as or similar to the line of business in which the retailer so owned or controlled is engaged; (viii) being the assignee of a person engaged in the business of leasing tangible personal property to others, where leased property of such person is situated within this state and such assignee has a security interest, as defined in subsection (37) of section 42a-1-201, in such property; and (ix) notwithstanding the fact that retail sales of items of tangible personal property are made from outside this state to a destination within this state and that a place of business is not

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maintained in this state, repairing or servicing such items, under a warranty, in this state, either directly or indirectly through an agent, independent contractor or subsidiary.

(B) A retailer who has contracted with a commercial printer for printing and distribution of printed material shall not be deemed to be engaged in business in this state because of the ownership or leasing by the retailer of tangible or intangible personal property located at the premises of the commercial printer in this state, the sale by the retailer of property of any kind produced or processed at and shipped or distributed from the premises of the commercial printer in this state, the activities of the retailer's employees or agents at the premises of the commercial printer in this state, which activities relate to quality control, distribution or printing services performed by the printer, or the activities of any kind performed by the commercial printer in this state for or on behalf of the retailer.

(C) A retailer not otherwise a retailer engaged in business in the state who purchases fulfillment services carried on in this state by a person other than an affiliated person, or who owns tangible personal property located on the premises of an unaffiliated person performing fulfillment services for such retailer shall not be deemed to be engaged in business in the state. For purposes of this subparagraph, persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than five per cent, whether direct or indirect, in the other, or where an ownership interest of more than five per cent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons who are affiliated persons with respect to each other. For purposes of this subparagraph, "fulfillment services" means services that are performed by a person on its premises on behalf of a purchaser of such services and that involve the receipt of orders from the purchaser of such services or an agent thereof, which orders are to be filled by the person from an inventory

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of products that are offered for sale by the purchaser of such services, and the shipment of such orders to customers of the purchaser of such services.

(D) A retailer not otherwise a retailer engaged in business in this state that participates in a trade show or shows at the convention center, as defined in subdivision (3) of section 32-600, shall not be deemed to be engaged in business in this state, regardless of whether the retailer has employees or other staff present at such trade shows, provided the retailer's activity at such trade shows is limited to displaying goods or promoting services, no sales are made, any orders received are sent outside this state for acceptance or rejection and are filled from outside this state, and provided further that such participation is not more than fourteen days, or part thereof, in the aggregate during the retailer's income year for federal income tax purposes.

Sec. 6. Subdivision (7) of section 12-430 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005, and applicable to contracts entered into on or after October 1, 2005*):

(7) (A) As used in this section, (i) "nonresident contractor" means a contractor who does not maintain a regular place of business in this state; [and] (ii) "regular place of business" means any bona fide office, factory, warehouse or other space in this state at which a contractor is doing business in its own name in a regular and systematic manner, and which place is continuously maintained, occupied, and used by the contractor in carrying on its business through its employees regularly in attendance to carry on the contractor's business in the contractor's own name, except that "regular place of business" does not include a place of business for a statutory agent for service of process, or a temporary office [at the site of construction] or location used by the contractor only for the

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duration of the contract, whether or not at the site of construction, or an office maintained, occupied and used by a person affiliated with the contractor; (iii) "contract price" means the total contract price, including deposits, amounts held as retainage, costs for any change orders, or charges for add-ons; and (iv) "person doing business with a nonresident contractor" does not include an owner or tenant of real property used exclusively for residential purposes and consisting of three or fewer dwelling units, in one of which the owner or tenant resides, provided each nonresident contractor doing business with such owner or tenant shall be required to comply with the bond requirements under subparagraph (F) of this subdivision.

(B) Any person doing business with a nonresident contractor [shall withhold payment in an amount of five per cent of the contract price and remit such amount as a deposit to the Commissioner of Revenue Services not later than thirty days after the completion of the contract] and making payments of the contract price to such nonresident contractor shall deduct and withhold from such payments an amount of five per cent of such payments, unless such nonresident contractor has furnished a certificate of compliance as described in subparagraph (E) of this subdivision. The amounts so required to be deducted and withheld shall be paid over to the commissioner by the last day of the month following the calendar quarter following the calendar quarter in which the first payment to the nonresident contractor is made, and every calendar quarter thereafter. Each such payment to the commissioner shall be accompanied by a form prescribed by the commissioner. The amount required to be deducted and withheld from the nonresident contractor, when so deducted and withheld, shall be held to be a special fund in trust for the state. No nonresident contractor shall have any right of action against a person deducting and withholding under this subdivision with respect to any moneys deducted and withheld and paid over to the commissioner in compliance with or intended compliance with this subdivision.

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(C) A nonresident contractor shall request, in writing, that the Commissioner of Revenue Services audit the records of such contractor for a project for which [a deposit was made under subparagraph (B) of this subdivision] amounts were deducted and withheld from such contractor under subparagraph (B) of this subdivision. If such request is not made within three years after the date the final payment of such amounts was made to the commissioner, such contractor waives the right to request such audit and claim a refund of such amounts. The commissioner shall, after receipt of such request, conduct an audit and issue to the nonresident contractor a certificate of no tax due or a certificate of tax due from the nonresident contractor. [Upon] Not later than ninety days after the issuance of a certificate of no tax due, the commissioner shall return [such deposit] to the nonresident contractor the amounts deducted and withheld from such contractor and paid over to the commissioner. Upon issuance of a certificate of taxes due, the commissioner may [pay to the nonresident contractor out of the deposit any excess over the amount] return to the nonresident contractor the amount by which the amounts deducted and withheld and paid over to the commissioner under subparagraph (B) of this subdivision exceed the amount of taxes set forth in the certificate, together with the interest and penalties then assessed.

(D) When a person doing business with the nonresident contractor [deposits with] pays over to the Commissioner of Revenue Services [the amount set forth in] amounts deducted and withheld pursuant to subparagraph (B) of this subdivision, [the commissioner shall issue such person a receipt for such amount. Upon the issuance of such receipt, the person doing business with the nonresident contractor] such person shall not be liable for any claim of the nonresident contractor for such [amount] amounts or for any claim of the commissioner for any taxes of the nonresident contractor arising

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from the activities of the nonresident contractor on the project for which the [deposit was made] amounts were paid over. Such payment shall not relieve the person doing business with the nonresident contractor of such person's liability for use taxes due on purchases of services from such nonresident contractor.

(E) When a nonresident contractor enters into a contract with the state, said contractor shall provide the Labor Department with evidence demonstrating compliance with the provisions of chapters 567 and 568, the prevailing wage requirements of chapter 557 and any other provisions of the general statutes related to conditions of employment.

(F) Not later than one hundred twenty days after the commencement of the contract, or thirty days after the completion of the contract, whichever is earlier, a nonresident contractor may [petition the commissioner to] (i) furnish a guarantee bond in a sum equivalent to five per cent of the contract price, or (ii) deposit with the commissioner a cash bond in a sum equal to five per cent of the contract price, in lieu of the requirements contained in subparagraph (B) of this subdivision. The commissioner may [grant such petition] accept such bond on such terms and conditions as the commissioner may require, and upon acceptance of such bond, shall issue a certificate of compliance to the contractor. The provisions of subparagraph (C) of this subdivision shall apply to such bond, upon completion of the contract, in the same manner as such provisions apply to [the deposit] amounts paid over under subparagraph (B) of this subdivision.

(G) Upon the furnishing of a certificate of compliance by the nonresident contractor to the person doing business with a nonresident contractor, such person shall not be liable for any claim of the commissioner for any taxes of the nonresident contractor arising from the activities of such contractor on the project for which the bond

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was provided. Such certificate of compliance shall not relieve the person doing business with the nonresident contractor of such person's liability for use taxes due on purchases of services from such nonresident contractor.

(H) If any person doing business with a nonresident contractor fails to deduct and withhold and pay over to the commissioner amounts under subparagraph (B) of this subdivision, or fails to obtain a certificate of compliance from the nonresident contractor pursuant to subparagraph (G) of this subdivision, such person shall be personally liable for payment of any taxes of the nonresident contractor arising from the activities of such contractor on the project for which such amounts or certificate were required.

Sec. 7. Subsection (b) of section 12-233 of the general statutes, as amended by public act 05-116, is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) (1) When it appears that any part of the deficiency for which a deficiency assessment is made is due to negligence or intentional disregard of the provisions of this part or regulations promulgated thereunder, there shall be imposed a penalty equal to ten per cent of the amount of such deficiency assessment, or fifty dollars, whichever is greater. When it appears that any part of the deficiency for which a deficiency assessment is made is due to fraud or intent to evade the provisions of this part or regulations promulgated thereunder, there shall be imposed a penalty equal to twenty-five per cent of the amount of such deficiency assessment. [When] For audits of returns commencing on or after January 1, 2006, when it appears that any part of the deficiency for which a deficiency assessment is made pursuant to section 12-233, as amended by this act, is due to failure to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, on the taxpayer's

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federal tax return, there shall be imposed a penalty equal to seventy-five per cent of the amount of such deficiency assessment.

(2) No taxpayer shall be subject to more than one penalty under this section in relation to the same tax period.

Sec. 8. Subsection (a) of section 12-728 of the general statutes, as amended by public act 05-116, is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) After a final return pursuant to the provisions of this chapter is filed, the commissioner shall cause the same to be examined and may make such further audit or investigation or reaudit as the commissioner deems necessary, and if the commissioner determines that there is a deficiency with respect to the payment of any tax due under this chapter, the commissioner shall assess or reassess the additional taxes, penalties and interest due to this state, give notice of such assessment or reassessment to the taxpayer and make demand upon the taxpayer for payment. Not later than sixty days after the mailing of such notice, the taxpayer shall pay to the commissioner, in cash or by check, draft or money order drawn to the order of the commissioner, the amount of the deficiency. Such amount shall bear interest at the rate of one per cent per month or fraction thereof from the date when the original tax became due and payable.

(2) When it appears that any part of the deficiency for which a deficiency assessment is made is due to negligence or intentional disregard of the provisions of this chapter or regulations adopted thereunder, there shall be imposed a penalty equal to ten per cent of the amount of such deficiency assessment. When it appears that any part of the deficiency for which a deficiency assessment is made is due to fraud or intent to evade the provisions of this chapter or regulations adopted thereunder, there shall be imposed a penalty equal to twenty-five per cent of the amount of such deficiency assessment.

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[When] For audits of returns commencing on or after January 1, 2006, when it appears that any part of the deficiency for which a deficiency assessment is made is due to failure to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, on the taxpayer's federal tax return, there shall be imposed a penalty equal to seventy-five per cent of the amount of such deficiency assessment.

Sec. 9. (*Effective from passage*) Notwithstanding the provisions of chapter 208 of the general statutes, with respect to an income year ending on September 30, 2004, for any taxpayer included in industry group 3363 of the North American Industry Classification System, United States, 1997 edition, the extended due date to file a return pursuant to said chapter 208 shall be July 1, 2005.

Approved July 13, 2005