



General Assembly

Substitute Bill No. 1232

January Session, 2005

* SB01232FIN__040405__ *

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:

1 Section 1. Subsection (a) of section 12-285b of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2005*):

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

16 Sec. 2. Subsection (a) of section 4-28m of the general statutes is
17 repealed and the following is substituted in lieu thereof (*Effective July*
18 *1, 2005*):

19 (a) (1) Not later than July 1, 2005, the commissioner shall develop
20 and make available for public inspection, on the Department of
21 Revenue Services' website and in such other forms as the
22 commissioner deems appropriate, a directory listing of all tobacco
23 product manufacturers that have (A) provided current and accurate
24 certifications conforming to the requirements of section 4-28l and all
25 brand families that are listed in such certifications, and (B) secured a
26 cigarette manufacturer's license pursuant to section 12-285b, as
27 amended by this act. The commissioner shall update the directory as
28 necessary in order to correct mistakes and to add or remove a tobacco
29 product manufacturer or brand family to keep the directory current
30 and in conformity with the requirements of sections 4-28k to 4-28r,
31 inclusive.

32 (2) The commissioner shall not include or retain in such directory
33 the name or brand families of any manufacturer (A) that has failed to
34 provide the required certification, [or] (B) whose certification the
35 commissioner determines is not in compliance with the provisions of
36 section 4-28l, unless such violation has been remedied to the
37 satisfaction of the commissioner, or (C) who has failed to secure or
38 retain a cigarette manufacturer's license pursuant to section 12-285b, as
39 amended by this act.

40 (3) The commissioner shall not include or retain in the directory any
41 brand family of a nonparticipating manufacturer if the commissioner
42 concludes: (A) All escrow payments required pursuant to the
43 provisions of sections 4-28h to 4-28j, inclusive, for any period for any
44 brand family, whether or not listed by such nonparticipating
45 manufacturer, have not been fully paid into a qualified escrow fund
46 governed by a qualified escrow agreement that has been approved by
47 the Attorney General, or (B) any outstanding final judgment, including
48 interest thereon, for a violation of sections 4-28h to 4-28j, inclusive, has
49 not been fully satisfied for such brand family and such manufacturer.

50 Sec. 3. Subdivision (20) of subsection (a) of section 12-213 of the
51 general statutes is repealed and the following is substituted in lieu

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

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

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

81 (C) A company that participates in a trade show or shows at the
82 convention center, as defined in subdivision (3) of section 32-600, shall
83 not be deemed to be carrying on or doing business in this state,
84 regardless of whether the company has employees or other staff

85 present at such trade shows, provided such company's activity at such
86 trade shows is limited to displaying goods or promoting services, no
87 sales are made, any orders received are sent outside this state for
88 acceptance or rejection and are filled from outside this state, and
89 provided further that such participation is not more than fourteen
90 days, or part thereof, in the aggregate during the company's income
91 year for federal income tax purposes.

92 Sec. 4. Subdivision (15) of subsection (a) of section 12-407 of the
93 general statutes is repealed and the following is substituted in lieu
94 thereof (*Effective from passage and applicable to taxable years commencing*
95 *on or after January 1, 2005*):

96 (15) (A) "Engaged in business in the state" means and includes but
97 shall not be limited to the following acts or methods of transacting
98 business: (i) Selling in this state, or any activity in this state in
99 connection with selling in this state, tangible personal property for use,
100 storage or consumption within the state; (ii) engaging in the transfer
101 for a consideration of the occupancy of any room or rooms in a hotel or
102 lodging house for a period of thirty consecutive calendar days or less;
103 (iii) rendering in this state any service described in any of the
104 subparagraphs of subdivision (2) of this subsection; (iv) maintaining,
105 occupying or using, permanently or temporarily, directly or indirectly,
106 through a subsidiary or agent, by whatever name called, any office,
107 place of distribution, sales or sample room or place, warehouse or
108 storage point or other place of business or having any representative,
109 agent, salesman, canvasser or solicitor operating in this state for the
110 purpose of selling, delivering or taking orders; (v) notwithstanding the
111 fact that retail sales are made from outside this state to a destination
112 within this state and that a place of business is not maintained in this
113 state, engaging in regular or systematic solicitation of sales of tangible
114 personal property in this state by the display of advertisements on
115 billboards or other outdoor advertising in this state, by the distribution
116 of catalogs, periodicals, advertising flyers or other advertising by
117 means of print, radio or television media, or by mail, telegraphy,
118 telephone, computer data base, cable, optic, microwave or other

119 communication system, for the purpose of effecting retail sales of
120 tangible personal property, provided one hundred or more retail sales
121 from outside this state to destinations within this state are made
122 during the twelve-month period ended on the September thirtieth
123 immediately preceding the monthly or quarterly period with respect to
124 which liability for tax under this chapter is determined; (vi) being
125 owned or controlled, either directly or indirectly, by a retailer engaged
126 in business in this state which is the same as or similar to the line of
127 business in which the retailer so owned or controlled is engaged; (vii)
128 being owned or controlled, either directly or indirectly, by the same
129 interests that own or control, either directly or indirectly, a retailer
130 engaged in business in this state which is the same as or similar to the
131 line of business in which the retailer so owned or controlled is
132 engaged; (viii) being the assignee of a person engaged in the business
133 of leasing tangible personal property to others, where leased property
134 of such person is situated within this state and such assignee has a
135 security interest, as defined in subsection (37) of section 42a-1-201, in
136 such property; and (ix) notwithstanding the fact that retail sales of
137 items of tangible personal property are made from outside this state to
138 a destination within this state and that a place of business is not
139 maintained in this state, repairing or servicing such items, under a
140 warranty, in this state, either directly or indirectly through an agent,
141 independent contractor or subsidiary.

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

153 state for or on behalf of the retailer.

154 (C) A retailer not otherwise a retailer engaged in business in the
155 state who purchases fulfillment services carried on in this state by a
156 person other than an affiliated person, or who owns tangible personal
157 property located on the premises of an unaffiliated person performing
158 fulfillment services for such retailer shall not be deemed to be engaged
159 in business in the state. For purposes of this subparagraph, persons are
160 affiliated persons with respect to each other where one of such persons
161 has an ownership interest of more than five per cent, whether direct or
162 indirect, in the other, or where an ownership interest of more than five
163 per cent, whether direct or indirect, is held in each of such persons by
164 another person or by a group of other persons who are affiliated
165 persons with respect to each other. For purposes of this subparagraph,
166 "fulfillment services" means services that are performed by a person on
167 its premises on behalf of a purchaser of such services and that involve
168 the receipt of orders from the purchaser of such services or an agent
169 thereof, which orders are to be filled by the person from an inventory
170 of products that are offered for sale by the purchaser of such services,
171 and the shipment of such orders to customers of the purchaser of such
172 services.

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

185 Sec. 5. Subdivision (7) of section 12-430 of the general statutes is

186 repealed and the following is substituted in lieu thereof (*Effective*
187 *October 1, 2005, and applicable to contracts entered into on or after October*
188 *1, 2005*):

189 (7) (A) As used in this section, (i) "nonresident contractor" means a
190 contractor who does not maintain a regular place of business in this
191 state; [and] (ii) "regular place of business" means any bona fide office,
192 factory, warehouse or other space in this state at which a
193 contractor is doing business in its own name in a regular and
194 systematic manner, and which place is continuously maintained,
195 occupied, and used by the contractor in carrying on its business
196 through its employees regularly in attendance to carry on the
197 contractor's business in the contractor's own name, except that
198 "regular place of business" does not include a place of business for a
199 statutory agent for service of process, or a temporary office [at the
200 site of construction] location used by the contractor only for the
201 duration of the contract, whether or not at the site of construction, or
202 an office maintained, occupied and used by a person affiliated with
203 the contractor; and (iii) "person doing business with a nonresident
204 contractor" does not include an owner or tenant of real property used
205 exclusively for residential purposes and consisting of three or fewer
206 dwelling units, in one of which the owner or tenant resides, provided
207 each nonresident contractor doing business with such owner or
208 tenant shall be required to comply with the bond requirements under
209 subparagraph (F) of this subdivision.

210 (B) Any person doing business with a nonresident contractor [shall
211 withhold payment in an amount of five per cent of the contract price
212 and remit such amount as a deposit to the Commissioner of Revenue
213 Services not later than thirty days after the completion of the
214 contract] and making payments to such nonresident contractor shall
215 deduct and withhold from such payments an amount of five per cent
216 of such payments, unless such nonresident contractor has furnished a
217 certificate of compliance as described in subparagraph (E) of this
218 subdivision. The amounts so required to be deducted and withheld
219 shall be paid over to the commissioner within six months of the first

220 payment to the nonresident contractor and every three months
221 thereafter, and each of such payments to the commissioner shall be
222 accompanied by a form prescribed by the commissioner. The amount
223 required to be deducted and withheld from the nonresident contractor,
224 when so deducted and withheld, shall be held to be a special fund in
225 trust for the state. No nonresident contractor shall have any right of
226 action against a person deducting and withholding under this
227 subdivision with respect to any moneys deducted and withheld and
228 paid over to the commissioner in compliance with or intended
229 compliance with this subdivision.

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

253 (D) When a person doing business with the nonresident contractor

254 [deposits with] pays over to the Commissioner of Revenue Services
255 [the amount set forth in] amounts deducted and withheld pursuant to
256 subparagraph (B) of this subdivision, [the commissioner shall issue
257 such person a receipt for such amount. Upon the issuance of such
258 receipt, the person doing business with the nonresident contractor]
259 such person shall not be liable for any claim of the nonresident
260 contractor for such [amount] amounts or for any claim of the
261 commissioner for any taxes of the nonresident contractor arising
262 from the activities of the nonresident contractor on the project for
263 which the [deposit was made] amounts were paid over. Such
264 payment shall not relieve the person doing business with the
265 nonresident contractor of such person's liability for sales and use
266 taxes due on purchases of tangible personal property or services
267 from such nonresident contractor.

268 (E) When a nonresident contractor enters into a contract with the
269 state, said contractor shall provide the Labor Department with
270 evidence demonstrating compliance with the provisions of chapters
271 567 and 568, the prevailing wage requirements of chapter 557 and any
272 other provisions of the general statutes related to conditions of
273 employment.

274 (F) Not later than one hundred twenty days after the
275 [commencement of the contract] date the first payment to the
276 nonresident contractor is made, or thirty days after the completion of
277 the contract, whichever is earlier, a nonresident contractor may
278 [petition the commissioner to] (i) furnish a guarantee bond in a sum
279 equivalent to five per cent of the contract price, or (ii) deposit with the
280 commissioner a cash bond in a sum equal to five per cent of the
281 contract price, in lieu of the requirements contained in subparagraph
282 (B) of this subdivision. The commissioner may [grant such petition]
283 accept such bond on such terms and conditions as the commissioner
284 may require, and upon acceptance of such bond, shall issue a
285 certificate of compliance to the contractor. The provisions of
286 subparagraph (C) of this subdivision shall apply to such bond, upon
287 completion of the contract, in the same manner as such provisions

288 apply to [the deposit] amounts paid over under subparagraph (B) of
 289 this subdivision.

290 (G) Upon the furnishing of a certificate of compliance by the
 291 nonresident contractor to the person doing business with a
 292 nonresident contractor, such person shall not be liable for any claim of
 293 the commissioner for any taxes of the nonresident contractor arising
 294 from the activities of such contractor on the project for which the bond
 295 was provided. Such certificate of compliance shall not relieve the
 296 person doing business with the nonresident contractor of such person's
 297 liability for sales and use taxes due on purchases of tangible personal
 298 property or services from such nonresident contractor.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2005</i>	12-285b(a)
Sec. 2	<i>July 1, 2005</i>	4-28m(a)
Sec. 3	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-213(a)(20)
Sec. 4	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-407(a)(15)
Sec. 5	<i>October 1, 2005, and applicable to contracts entered into on or after October 1, 2005</i>	12-430(7)

FIN *Joint Favorable Subst.*