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MBT Draft Proposed Rule - Actively Solicits

R208.1 Definition of "Actively Solicits"

(1) For purposes of MCL 208.1200, "actively solicits" means purposeful solicitation of persons within this state.

(a) "Solicitation" means either of the following:

- (i) Speech or conduct that explicitly or implicitly invites an order.
- (ii) Activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

(b) "Purposeful solicitation" means solicitation that is directed at or intended to reach either of the following:

- (i) Persons within Michigan.
- (ii) The Michigan market.

(2) Active solicitation includes, but is not limited to, solicitation through any of the following:

- (a) Use of mail, telephone, and e-mail.
- (b) Advertising, including print, radio, internet, television, and other media.
- (c) Maintenance of an internet site over or through which sales transactions occur with persons within Michigan.

Example 1: A retailer located outside Michigan maintains an internet site over and through which customers may browse products and place orders. The internet site is generally available to all persons throughout the country. Through maintenance of the interactive site, the retailer intends to reach all persons and markets, including persons within Michigan and the Michigan market. The retailer is actively soliciting sales in Michigan.

Example 2: A retailer located outside Michigan maintains an internet site over and through which customers may browse products and place orders. The retailer does not accept orders from and does not ship to persons within Michigan. The retailer does not direct its activities at persons within Michigan or the Michigan market. The retailer is not actively soliciting sales in Michigan.

Example 3: A manufacturer located outside Michigan maintains an internet site over and through which persons may view the manufacturer's products and specifications. The

manufacturer does not accept orders through the internet site, provide order forms, or invite persons to call the manufacturer with orders. Although the internet site is generally available to all persons throughout the country, the manufacture is not actively soliciting sales in Michigan.

Example 4: A retailer located outside Michigan advertises in a newspaper not circulated in Michigan. The newspaper has a small number of mail subscribers in Michigan. The retailer does not direct its activities at persons within Michigan or the Michigan market. The retailer is not actively soliciting sales in Michigan.

Example 5: A manufacturer advertises a consumer product in Michigan through television, radio, and newspaper advertisements. The advertisements are intended to increase awareness of the product. Consumers may not purchase the product from the manufacturer; rather, consumers must purchase the product from a retailer. The manufacturer offers no coupons in its print advertisements. The advertisements do not constitute solicitation and the manufacturer is not actively soliciting sales in Michigan.

Example 6: A person within Michigan initiates contact with an out-of-state financial institution to request a loan. The out-of-state financial institution does not otherwise solicit sales in Michigan. Subsequent negotiations between the parties do not constitute active solicitation by the financial institution.

(3) The Department of Treasury may look to the quality, nature, and magnitude of the activity on a facts and circumstances basis to determine whether acts of solicitation are sufficient to establish "active solicitation."