

SUBSTITUTE FOR
SENATE BILL NO. 1038

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 111 (MCL 208.1111), as amended by 2007 PA 207.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 111. (1) "Gross receipts" means the entire amount
2 received by the taxpayer, **BUT NOT INCLUDING THOSE AMOUNTS THAT ARE**
3 **ONLY DEEMED RECEIVED UNDER THE INTERNAL REVENUE CODE**, from any
4 **BUSINESS** activity whether in intrastate, interstate, or foreign
5 commerce carried on for direct or indirect gain, benefit, or
6 advantage to the taxpayer or to others except for the following:

7 (a) Proceeds from sales by a principal that the taxpayer
8 collects in an agency capacity solely on behalf of the principal
9 and delivers to the principal.

10 (b) Amounts received by the taxpayer as an agent solely on

1 behalf of the principal that are expended by the taxpayer for any
2 of the following:

3 (i) The performance of a service by a third party for the
4 benefit of the principal that is required by law to be performed by
5 a licensed person.

6 (ii) The performance of a service by a third party for the
7 benefit of the principal that the taxpayer has not undertaken a
8 contractual duty to perform.

9 (iii) Principal and interest under a mortgage loan or land
10 contract, lease or rental payments, or taxes, utilities, or
11 insurance premiums relating to real or personal property owned or
12 leased by the principal.

13 (iv) A capital asset of a type that is, or under the internal
14 revenue code will become, eligible for depreciation, amortization,
15 or accelerated cost recovery by the principal for federal income
16 tax purposes, or for real property owned or leased by the
17 principal.

18 (v) Property not described under subparagraph (iv) that is
19 purchased by the taxpayer on behalf of the principal and that the
20 taxpayer does not take title to or use in the course of performing
21 its contractual business activities.

22 (vi) Fees, taxes, assessments, levies, fines, penalties, or
23 other payments established by law that are paid to a governmental
24 entity and that are the legal obligation of the principal.

25 (c) Amounts that are excluded from gross income of a foreign
26 corporation engaged in the international operation of aircraft
27 under section 883(a) of the internal revenue code.

1 (d) Amounts received by an advertising agency used to acquire
2 advertising media time, space, production, or talent on behalf of
3 another person.

4 (e) Notwithstanding any other provision of this section,
5 amounts received by a taxpayer that manages real property owned by
6 a third party that are deposited into a separate account kept in
7 the name of that third party and that are not reimbursements to the
8 taxpayer and are not indirect payments for management services that
9 the taxpayer provides to that third party.

10 (f) Proceeds from the taxpayer's transfer of an account
11 receivable if the sale that generated the account receivable was
12 included in gross receipts for federal income tax purposes. This
13 subdivision does not apply to a taxpayer that during the tax year
14 both buys and sells any receivables.

15 (g) Proceeds from any of the following:

16 (i) The original issue of stock or equity instruments.

17 (ii) The original issue of debt instruments.

18 (h) Refunds from returned merchandise.

19 (i) Cash and in-kind discounts.

20 (j) Trade discounts.

21 (k) Federal, state, or local tax refunds.

22 (l) Security deposits.

23 (m) Payment of the principal portion of loans.

24 (n) Value of property received in a like-kind exchange.

25 (o) Proceeds from a sale, transaction, exchange, involuntary
26 conversion, or other disposition of tangible, intangible, or real
27 property that is a capital asset as defined in section 1221(a) of

1 the internal revenue code, ~~or~~ **INCLUDING ANY HEDGING TRANSACTION AS**
2 **DESCRIBED IN SECTION 1221(A) (7) OF THE INTERNAL REVENUE CODE AND**
3 land that **WAS PURCHASED, INCLUDING LAND THAT WAS PURCHASED BEFORE**
4 **JANUARY 1, 2008, AND** qualifies as property used in the trade or
5 business as defined in section 1231(b) of the internal revenue
6 code. ~~, less any gain from the disposition to the extent that gain~~
7 ~~is included in federal taxable income.~~

8 (p) The proceeds from a policy of insurance, a settlement of a
9 claim, or a judgment in a civil action less any proceeds under this
10 subdivision that are included in federal taxable income.

11 (q) For a sales finance company, as defined in section 2 of
12 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
13 492.102, and directly or indirectly owned in whole or in part by a
14 motor vehicle manufacturer as of January 1, 2008, and for a person
15 that is a broker or dealer as defined under section 78c(a) (4) or
16 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
17 included in the unitary business group of that broker or dealer
18 that buys and sells for its own account, contracts that are subject
19 to the commodity exchange act, 7 USC 1 to 27f, amounts realized
20 from the repayment, maturity, sale, or redemption of the principal
21 of a loan, bond, or mutual fund, certificate of deposit, or similar
22 marketable instrument provided such instruments are not held as
23 inventory.

24 (r) For a sales finance company, as defined in section 2 of
25 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
26 492.102, and directly or indirectly owned in whole or in part by a
27 motor vehicle manufacturer as of January 1, 2008, and for a person

1 that is a broker or dealer as defined under section 78c(a)(4) or
2 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
3 included in the unitary business group of that broker or dealer
4 that buys and sells for its own account, contracts that are subject
5 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
6 received under a repurchase agreement or other transaction properly
7 characterized as a loan.

8 (s) For a mortgage company, proceeds representing the
9 principal balance of loans transferred or sold in the tax year. For
10 purposes of this subdivision, "mortgage company" means a person
11 that is licensed under the mortgage brokers, lenders, and servicers
12 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the
13 secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and
14 has greater than 90% of its revenues, in the ordinary course of
15 business, from the origination, sale, or servicing of residential
16 mortgage loans.

17 (t) For a professional employer organization, any amount
18 charged by a professional employer organization that represents the
19 actual cost of wages and salaries, benefits, worker's compensation,
20 payroll taxes, withholding, or other assessments paid to or on
21 behalf of a covered employee by the professional employer
22 organization under a professional employer arrangement.

23 (u) Any invoiced items used to provide more favorable floor
24 plan assistance to a person subject to the tax imposed under this
25 act than to a person not subject to this tax and paid by a
26 manufacturer, distributor, or supplier.

27 (v) For an individual, estate, ~~partnership~~ organized

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1 ~~exclusively for estate or gift planning purposes, or trust~~
 2 organized ~~exclusively~~ for estate or gift planning purposes, **OTHER**
 3 **PERSON ORGANIZED FOR ESTATE OR GIFT PLANNING PURPOSES, OR PERSON**
 4 **ORGANIZED TO CONDUCT INVESTMENT ACTIVITY WHICH NEITHER CONDUCTS A**
 5 **TRADE OR BUSINESS NOR CONDUCTS INVESTMENT ACTIVITY FOR A TRADE OR**
 6 **BUSINESS**, amounts received other than those from transactions,
 7 activities, and sources in the regular course of the taxpayer's
 8 trade or business, including **<<BOTH OF>>** the following:

**<<(i) RECEIPTS INCLUDED IN GROSS RECEIPTS UNDER THIS SUBDIVISION
 INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:**

9 **(A) ~~(i)~~**>> Receipts from tangible and intangible property if the
 10 acquisition, rental, management, or disposition of the property
 11 constitutes integral parts of the taxpayer's regular trade or
 12 business operations.

13 **<<(B) ~~(ii)~~**>> Receipts received in the course of the taxpayer's
 trade or
 14 business from stock and securities of any foreign or domestic
 15 corporation and dividend and interest income.

16 **<<(C) ~~(iii)~~**>> Receipts derived from isolated sales, leases,
 assignment,
 17 licenses, divisions, or other infrequently occurring dispositions,
 18 transfers, or transactions involving **TANGIBLE OR INTANGIBLE**
 19 property if the property is or was used in the taxpayer's trade or
 20 business operation.

21 ~~—— (iv) Receipts derived from the sale of a business.~~

22 **<<(ii) ~~(v)~~** Receipts excluded from gross receipts under this
SUBDIVISION

23 ~~subsection for an individual, estate, partnership organized~~
 24 ~~exclusively for estate or gift planning purposes, or trust~~
 25 ~~organized exclusively for estate or gift planning purposes,~~

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>> include, but are not limited to, the following:

(A) ~~<<Personal investment~~ **INVESTMENT**>> activity, including interest, dividends, and gains from a ~~<<personal>>~~ investment portfolio or retirement account.

(B) Disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

(W) **INTEREST INCOME AND DIVIDENDS DERIVED FROM OBLIGATIONS OR SECURITIES OF THE UNITED STATES GOVERNMENT AND THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE IN THE SAME AMOUNT THAT WAS EXCLUDED FROM FEDERAL TAXABLE INCOME.**

(X) **DIVIDENDS AND ROYALTIES RECEIVED FROM A FOREIGN OPERATING ENTITY OR A PERSON OTHER THAN A UNITED STATES PERSON, INCLUDING, BUT NOT LIMITED TO, THE AMOUNTS DETERMINED UNDER SECTION 78 OF THE INTERNAL REVENUE CODE AND SECTIONS 951 TO 964 OF THE INTERNAL REVENUE CODE.**

(Y) **ANY TAX, FEE, OR SURCHARGE REQUIRED BY LAW, OR ANY DEPOSIT REQUIRED UNDER 1976 IL 1, MCL 445.571 TO 445.576.**

(Z) **FOR A PARTNER, AMOUNTS RECEIVED THAT ARE ATTRIBUTABLE TO ANOTHER ENTITY WHOSE BUSINESS ACTIVITIES ARE TAXABLE UNDER SECTION 203 OR WOULD BE SUBJECT TO THE TAX UNDER SECTION 203 IF THE BUSINESS ACTIVITIES WERE IN THIS STATE.**

<<(AA) PROCEEDS FROM THE SALE OF DEPRECIABLE PROPERTY USED IN A TRADE OR BUSINESS THAT IS FULLY DEPRECIATED UNDER SECTION 168 OF THE INTERNAL REVENUE CODE.

(BB) AMOUNTS RECEIVED BY A TAXPAYER FOR THE REIMBURSEMENT OF COSTS ASSOCIATED WITH A SERVICE PROVIDED TO A MEDICAID RECIPIENT OR BENEFICIARY WHO RECEIVES THAT CARE OR SERVICE AT A NURSING HOME. AS USED IN THIS SUBDIVISION, "NURSING HOME" MEANS THAT TERM AS DEFINED IN SECTION 20109 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20109.

(CC) AMOUNTS PAID BY THE TAXPAYER FOR THE LICENSURE OR RENEWAL OF A LICENSE FOR THE TAXPAYER'S INSURANCE PRODUCERS INCLUDING ANY EXAMINATION FEES, FEES ASSOCIATED WITH CONTINUING EDUCATION OR PROGRAM STUDY FEES, AND ANY OTHER FEES NECESSARY TO ENSURE THAT EACH INSURANCE PRODUCER

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MAINTAINS HIS OR HER LICENSE REQUIRED UNDER THE LAWS OF THIS STATE TO SELL, SOLICIT, OR NEGOTIATE INSURANCE.

(DD) AMOUNTS PAID BY THE TAXPAYER FOR THE LEASE OF PERSONAL PROPERTY IF THE LEASE OF THE PERSONAL PROPERTY CONSTITUTES INTEGRAL PARTS OF THE TAXPAYER'S REGULAR TRADE OR BUSINESS OPERATIONS.

(EE) FOR A TAXPAYER LICENSED UNDER ARTICLE 25 OR 26 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2501 TO 339.2518 AND 339.2601 TO 339.2637, PAYMENTS TO AN INDEPENDENT CONTRACTOR LICENSED UNDER ARTICLE 25 OR 26 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2501 TO 339.2518 AND 339.2601 TO 339.2637.>>

24 (2) "Insurance company" means an authorized insurer as defined
25 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
26 500.106.

27 (3) "Internal revenue code" means the United States internal

1 revenue code of 1986 in effect on January 1, 2008 or, at the option
2 of the taxpayer, in effect for the tax year.

3 (4) "Inventory" means, except as provided in subdivision (e),
4 all of the following:

5 (a) The stock of goods held for resale in the regular course
6 of trade of a retail or wholesale business, including electricity
7 or natural gas purchased for resale.

8 (b) Finished goods, goods in process, and raw materials of a
9 manufacturing business purchased from another person.

10 (c) For a person that is a new motor vehicle dealer licensed
11 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923,
12 floor plan interest expenses for new motor vehicles. For purposes
13 of this subdivision, "floor plan interest" means interest paid that
14 finances any part of the person's purchase of new motor vehicle
15 inventory from a manufacturer, distributor, or supplier. However,
16 amounts attributable to any invoiced items used to provide more
17 favorable floor plan assistance to a person subject to the tax
18 imposed under this act than to a person not subject to this tax is
19 considered interest paid by a manufacturer, distributor, or
20 supplier.

21 (d) For a person that is a broker or dealer as defined under
22 section 78c(a)(4) or (5) of the securities exchange act of 1934, 15
23 USC 78c, or a person included in the unitary business group of that
24 broker or dealer that buys and sells for its own account, contracts
25 that are subject to the commodity exchange act, 7 USC 1 to 27f, the
26 cost of securities as defined under section 475(c)(2) of the
27 internal revenue code and the cost of commodities as defined under

1 section 475(e)(2)(b), (c), and (d) of the internal revenue code,
2 excluding interest expense other than interest expense related to
3 repurchase agreements.

4 (e) Inventory does not include either of the following:

5 (i) Personal property under lease or principally intended for
6 lease rather than sale.

7 (ii) Property allowed a deduction or allowance for depreciation
8 or depletion under the internal revenue code.

9 (5) "Officer" means an officer of a corporation other than a
10 subchapter S corporation, including all of the following:

11 (a) The chairperson of the board.

12 (b) The president, vice president, secretary, or treasurer of
13 the corporation or board.

14 (c) Persons performing similar duties to persons described in
15 subdivisions (a) and (b).

16 Enacting section 1. This amendatory act is retroactive and
17 effective for taxes levied on and after January 1, 2008.