

# SENATE BILL No. 1038

January 22, 2008, Introduced by Senators CASSIS, PAPPAGEORGE and CROPSEY and referred to the Committee on Finance.

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.

1 (b) Amounts received by the taxpayer as an agent solely on  
2 behalf of the principal that are expended by the taxpayer for any  
3 of the following:

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

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

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

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

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

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

26 (c) Amounts that are excluded from gross income of a foreign  
27 corporation engaged in the international operation of aircraft

1 under section 883(a) of the internal revenue code.

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

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

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

16 (g) Proceeds from any of the following:

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

18 (ii) The original issue of debt instruments.

19 **(iii) TREASURY FUNCTIONS THAT GENERATE INVESTMENT INCOME, WHICH**  
20 **FUNCTIONS ARE EMBEDDED WITHIN AN OPERATING ENTITY.**

21 (h) Refunds from returned merchandise.

22 (i) Cash and in-kind discounts.

23 (j) Trade discounts.

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

25 (l) Security deposits.

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

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

1 (o) Proceeds from a sale, transaction, exchange, involuntary  
2 conversion, or other disposition of tangible, intangible, or real  
3 property that is a capital asset as defined in section 1221(a) of  
4 the internal revenue code **BUT INCLUDING ANY HEDGING TRANSACTION AS**  
5 **DESCRIBED IN SECTION 1221(A) (7) OF THE INTERNAL REVENUE CODE** or  
6 land that **WAS PURCHASED BEFORE JANUARY 1, 2008 AND** qualifies as  
7 property used in the trade or business as defined in section  
8 1231(b) of the internal revenue code. ~~, less any gain from the~~  
9 ~~disposition to the extent that gain is included in federal taxable~~  
10 ~~income.~~

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

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

27 (r) For a sales finance company, as defined in section 2 of

1 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL  
2 492.102, and directly or indirectly owned in whole or in part by a  
3 motor vehicle manufacturer as of January 1, 2008, and for a person  
4 that is a broker or dealer as defined under section 78c(a)(4) or  
5 (5) of the securities exchange act of 1934, 15 USC 78c, or a person  
6 included in the unitary business group of that broker or dealer  
7 that buys and sells for its own account, contracts that are subject  
8 to the commodity exchange act, 7 USC 1 to 27f, the principal amount  
9 received under a repurchase agreement or other transaction properly  
10 characterized as a loan.

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

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

26 (u) Any invoiced items used to provide more favorable floor  
27 plan assistance to a person subject to the tax imposed under this

1 act than to a person not subject to this tax and paid by a  
2 manufacturer, distributor, or supplier.

3 (v) For an individual, estate, ~~partnership organized~~  
4 ~~exclusively for estate or gift planning purposes, or trust~~  
5 organized ~~exclusively for estate or gift planning purposes, OTHER~~  
6 **PERSON ORGANIZED FOR ESTATE OR GIFT PLANNING PURPOSES, OR PERSON**  
7 **ORGANIZED TO CONDUCT INVESTMENT ACTIVITY WHICH DOES NOT CONDUCT A**  
8 **TRADE OR BUSINESS OR CONDUCT INVESTMENT ACTIVITY FOR A TRADE OR**  
9 **BUSINESS**, amounts received other than those from transactions,  
10 activities, and sources in the regular course of the taxpayer's  
11 trade or business, including the following:

12 (i) Receipts from tangible and intangible property if the  
13 acquisition, rental, management, or disposition of the property  
14 constitutes integral parts of the taxpayer's regular trade or  
15 business operations.

16 (ii) Receipts received in the course of the taxpayer's trade or  
17 business from stock and securities of any foreign or domestic  
18 corporation and dividend and interest income.

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

24 ~~Receipts derived from the sale of a business.~~

25 (iv) ~~(v)~~ Receipts excluded from gross receipts under this  
26 subsection for an individual, estate, ~~partnership organized~~  
27 ~~exclusively for estate or gift planning purposes, or trust~~

1 organized ~~exclusively~~ for estate or gift planning purposes, OTHER  
2 PERSON ORGANIZED FOR ESTATE OR GIFT PLANNING PURPOSES, OR PERSON  
3 ORGANIZED TO CONDUCT INVESTMENT ACTIVITY WHICH DOES NOT CONDUCT A  
4 TRADE OR BUSINESS OR CONDUCT INVESTMENT ACTIVITY FOR A TRADE OR  
5 BUSINESS include, but are not limited to, the following:

6 (A) Personal investment activity, including interest,  
7 dividends, and gains from a personal investment portfolio or  
8 retirement account.

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

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

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

20 (Y) ANY TAX, FEE, OR SURCHARGE REQUIRED BY LAW.

21 (Z) FOR A PARTNER, AMOUNTS RECEIVED THAT ARE ATTRIBUTABLE TO  
22 ANOTHER ENTITY WHOSE BUSINESS ACTIVITIES ARE TAXABLE UNDER SECTION  
23 203 OR WOULD BE SUBJECT TO THE TAX UNDER SECTION 203 IF THE  
24 BUSINESS ACTIVITIES WERE IN THIS STATE.

25 (2) "Insurance company" means an authorized insurer as defined  
26 in section 106 of the insurance code of 1956, 1956 PA 218, MCL  
27 500.106.

1           (3) "Internal revenue code" means the United States internal  
2 revenue code of 1986 in effect on January 1, 2008 or, at the option  
3 of the taxpayer, in effect for the tax year.

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

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

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

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

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



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

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

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

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

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

12 (a) The chairperson of the board.

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

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

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