

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 369

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 105, 111, 405, and 505 (MCL 208.1105,
208.1111, 208.1405, and 208.1505), sections 105 and 405 as amended
by 2007 PA 145 and section 111 as amended by 2010 PA 133, and by
adding section 512.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 105. (1) "Business activity" means a transfer of legal or
2 equitable title to or rental of property, whether real, personal,
3 or mixed, tangible or intangible, or the performance of services,
4 or a combination thereof, made or engaged in, or caused to be made
5 or engaged in, whether in intrastate, interstate, or foreign
6 commerce, with the object of gain, benefit, or advantage, whether

1 direct or indirect, to the taxpayer or to others, but does not
2 include the services rendered by an employee to his or her employer
3 or services as a director of a corporation. Although an activity of
4 a taxpayer may be incidental to another or to other of his or her
5 business activities, each activity shall be considered to be
6 business engaged in within the meaning of this act.

7 (2) "Business income" means that part of federal taxable
8 income derived from business activity. For a partnership or S
9 corporation, business income includes payments and items of income
10 and expense that are attributable to business activity of the
11 partnership or S corporation and separately reported to the
12 partners or shareholders. For an organization that is a mutual or
13 cooperative electric company exempt under section 501(c)(12) of the
14 internal revenue code, business income equals the organization's
15 excess or deficiency of revenues over expenses as reported to the
16 federal government by those organizations exempt from the federal
17 income tax under the internal revenue code, less capital credits
18 paid to members of that organization, less income attributed to
19 equity in another organization's net income, and less income
20 resulting from a charge approved by a state or federal regulatory
21 agency that is restricted for a specified purpose and refundable if
22 it is not used for the specified purpose. For a tax-exempt person,
23 business income means only that part of federal taxable income
24 derived from unrelated business activity. **FOR A PERSON THAT IS**
25 **ORGANIZED EXCLUSIVELY TO CONDUCT INVESTMENT ACTIVITY AND THAT DOES**
26 **NOT CONDUCT INVESTMENT ACTIVITY FOR ANY PERSON OTHER THAN AN**
27 **INDIVIDUAL OR A PERSON RELATED TO THAT INDIVIDUAL AND FOR A COMMON**

1 TRUST FUND ESTABLISHED UNDER THE COLLECTIVE INVESTMENTS FUNDS ACT,
2 1941 PA 174, MCL 555.101 TO 555.113, BUSINESS INCOME EXCLUDES
3 INCOME DERIVED FROM INVESTMENT ACTIVITY UNLESS THE ACTIVITY IS IN
4 THE REGULAR COURSE OF THE PERSON'S TRADE OR BUSINESS. FOR PURPOSES
5 OF THIS SUBSECTION, A PERSON IS RELATED TO AN INDIVIDUAL IF THAT
6 PERSON IS A SPOUSE, BROTHER OR SISTER, WHETHER OF THE WHOLE OR HALF
7 BLOOD OR BY ADOPTION, ANCESTOR, LINEAL DESCENDANT OF THAT
8 INDIVIDUAL OR RELATED PERSON, OR A TRUST BENEFITING THAT INDIVIDUAL
9 OR 1 MORE PERSONS RELATED TO THAT INDIVIDUAL. For an individual,
10 estate, ~~partnership organized exclusively for estate or gift~~
11 ~~planning purposes, or trust~~ OR PERSON organized exclusively for
12 estate or gift planning purposes, business income is that part of
13 federal taxable income derived from transactions, activities, and
14 sources in the regular course of the ~~taxpayer's~~ PERSON'S trade or
15 business, including the following:

16 (a) All income from tangible and intangible property if the
17 acquisition, rental, **LEASE**, management, or disposition of the
18 property constitutes integral parts of the ~~taxpayer's~~ PERSON'S
19 regular trade or business operations.

20 (b) Gains or losses incurred in the ~~taxpayer's~~ PERSON'S trade
21 or business from stock and securities of any foreign or domestic
22 corporation and dividend and interest income.

23 (c) Income derived from isolated sales, leases, ~~assignment,~~
24 **ASSIGNMENTS**, licenses, divisions, or other infrequently occurring
25 dispositions, transfers, or transactions involving **TANGIBLE,**
26 **INTANGIBLE, OR REAL** property if the property is or was used in the
27 ~~taxpayer's~~ PERSON'S trade or business operation.

1 (d) Income derived from the sale of **AN INTEREST IN** a business
 2 **THAT CONSTITUTES AN INTEGRAL PART OF THE PERSON'S REGULAR TRADE OR**
 3 **BUSINESS.**

4 **(E) INCOME DERIVED FROM THE LEASE OR RENTAL OF REAL PROPERTY.**

5 **(F)** ~~(e)~~ Income not included in business income for an
 6 individual, estate, ~~partnership organized exclusively for estate or~~
 7 ~~gift planning purposes, or trust~~ **OR PERSON** organized exclusively
 8 for estate or gift planning purposes includes, but is not limited
 9 to, the following:

10 (i) ~~Personal~~ **INCOME FROM** investment activity, including
 11 interest, dividends, **ROYALTIES**, and gains from a ~~personal~~ **AN**
 12 investment portfolio or retirement account, **IF THE INVESTMENT**
 13 **ACTIVITY IS NOT PART OF THE PERSON'S TRADE OR BUSINESS.**

14 (ii) ~~Disposition~~ **INCOME FROM THE DISPOSITION** of tangible,
 15 intangible, or real property held for personal use and enjoyment,
 16 such as a personal residence or personal assets.

17 Sec. 111. (1) "Gross receipts" means the entire amount
 18 received by the taxpayer as determined by using the taxpayer's
 19 method of accounting used for federal income tax purposes, less any
 20 amount deducted as bad debt for federal income tax purposes that
 21 corresponds to items of gross receipts included in the modified
 22 gross receipts tax base for the current tax year or a past tax year
 23 phased in over a 5-year period starting with 50% of that amount in
 24 the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax
 25 year, 75% in the 2011 tax year, and 100% in the 2012 tax year and
 26 each tax year thereafter, from any activity whether in intrastate,
 27 interstate, or foreign commerce carried on for direct or indirect

1 gain, benefit, or advantage to the taxpayer or to others except for
2 the following:

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

6 (b) Amounts received by the taxpayer as an agent solely on
7 behalf of the principal that are expended by the taxpayer for any
8 of the following:

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

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

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

19 (iv) A capital asset of a type that is, or under the internal
20 revenue code will become, eligible for depreciation, amortization,
21 or accelerated cost recovery by the principal for federal income
22 tax purposes, or for real property owned or leased by the
23 principal.

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

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

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

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

10 (e) Amounts received by a newspaper to acquire advertising
11 space not owned by that newspaper in another newspaper on behalf of
12 another person. This subdivision does not apply to any
13 consideration received by the taxpayer for acquiring that
14 advertising space.

15 (f) Notwithstanding any other provision of this section,
16 amounts received by a taxpayer that manages real property owned by
17 a third party that are deposited into a separate account kept in
18 the name of that third party and that are not reimbursements to the
19 taxpayer and are not indirect payments for management services that
20 the taxpayer provides to that third party.

21 (g) Proceeds from the taxpayer's transfer of an account
22 receivable if the sale that generated the account receivable was
23 included in gross receipts for federal income tax purposes. This
24 subdivision does not apply to a taxpayer that during the tax year
25 both buys and sells any receivables.

26 (h) Proceeds from any of the following:

27 (i) The original issue of stock or equity instruments or equity

1 issued by a regulated investment company as that term is defined
2 under section 851 of the internal revenue code.

3 (ii) The original issue of debt instruments.

4 (i) Refunds from returned merchandise.

5 (j) Cash and in-kind discounts.

6 (k) Trade discounts.

7 (l) Federal, state, or local tax refunds.

8 (m) Security deposits.

9 (n) Payment of the principal portion of loans.

10 (o) Value of property received in a like-kind exchange.

11 (p) Proceeds from a sale, transaction, exchange, involuntary
12 conversion, maturity, redemption, repurchase, recapitalization, or
13 other disposition or reorganization of tangible, intangible, or
14 real property, less any gain from the disposition or reorganization
15 to the extent that the gain is included in the taxpayer's federal
16 taxable income, if the property satisfies 1 or more of the
17 following:

18 (i) The property is a capital asset as defined in section
19 1221(a) of the internal revenue code.

20 (ii) The property is land that qualifies as property used in
21 the trade or business as defined in section 1231(b) of the internal
22 revenue code.

23 (iii) The property is used in a hedging transaction entered into
24 by the taxpayer in the normal course of the taxpayer's trade or
25 business primarily to manage the risk of exposure to foreign
26 currency fluctuations that affect assets, liabilities, profits,
27 losses, equity, or investments in foreign operations; interest rate

1 fluctuations; or commodity price fluctuations. For purposes of this
2 subparagraph, the actual transfer of title of real or tangible
3 personal property to another person is not a hedging transaction.
4 Only the overall net gain from the hedging transactions entered
5 into during the tax year is included in gross receipts. As used in
6 this subparagraph, "hedging transaction" means that term as defined
7 under section 1221 of the internal revenue code regardless of
8 whether the transaction was identified by the taxpayer as a hedge
9 for federal income tax purposes, provided, however, that
10 transactions excluded under this subparagraph and not identified as
11 a hedge for federal income tax purposes shall be identifiable to
12 the department by the taxpayer as a hedge in its books and records.

13 (iv) The property is investment and trading assets managed as
14 part of the person's treasury function. For purposes of this
15 subparagraph, a person principally engaged in the trade or business
16 of purchasing and selling investment and trading assets is not
17 performing a treasury function. Only the overall net gain from the
18 treasury function incurred during the tax year is included in gross
19 receipts. As used in this subparagraph, "treasury function" means
20 the pooling and management of investment and trading assets for the
21 purpose of satisfying the cash flow or liquidity needs of the
22 taxpayer's trade or business.

23 (q) The proceeds from a policy of insurance, a settlement of a
24 claim, or a judgment in a civil action less any proceeds under this
25 subdivision that are included in federal taxable income.

26 (r) For a sales finance company, as defined in section 2 of
27 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL

1 492.102, and directly or indirectly owned in whole or in part by a
2 motor vehicle manufacturer as of January 1, 2008, and for a person
3 that is a broker or dealer as defined under section 78c(a)(4) or
4 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
5 included in the unitary business group of that broker or dealer
6 that buys and sells for its own account, contracts that are subject
7 to the commodity exchange act, 7 USC 1 to 27f, amounts realized
8 from the repayment, maturity, sale, or redemption of the principal
9 of a loan, bond, or mutual fund, certificate of deposit, or similar
10 marketable instrument provided such instruments are not held as
11 inventory.

12 (s) For a sales finance company, as defined in section 2 of
13 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
14 492.102, and directly or indirectly owned in whole or in part by a
15 motor vehicle manufacturer as of January 1, 2008, and for a person
16 that is a broker or dealer as defined under section 78c(a)(4) or
17 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
18 included in the unitary business group of that broker or dealer
19 that buys and sells for its own account, contracts that are subject
20 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
21 received under a repurchase agreement or other transaction properly
22 characterized as a loan.

23 (t) For a mortgage company, proceeds representing the
24 principal balance of loans transferred or sold in the tax year. For
25 purposes of this subdivision, "mortgage company" means a person
26 that is licensed under the mortgage brokers, lenders, and servicers
27 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the

1 secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and
2 has greater than 90% of its revenues, in the ordinary course of
3 business, from the origination, sale, or servicing of residential
4 mortgage loans.

5 (u) For a professional employer organization, any amount
6 charged by a professional employer organization that represents the
7 actual cost of wages and salaries, benefits, worker's compensation,
8 payroll taxes, withholding, or other assessments paid to or on
9 behalf of a covered employee by the professional employer
10 organization under a professional employer arrangement.

11 (v) Any invoiced items used to provide more favorable floor
12 plan assistance to a person subject to the tax imposed under this
13 act than to a person not subject to this tax and paid by a
14 manufacturer, distributor, or supplier.

15 (w) For an individual, estate, or ~~other~~ person organized for
16 estate or gift planning purposes, amounts received other than those
17 from transactions, activities, and sources in the regular course of
18 the ~~taxpayer's~~ **PERSON'S** trade or business. For purposes of this
19 subdivision, all of the following apply:

20 (i) Amounts received from transactions, activities, and sources
21 in the regular course of the ~~taxpayer's~~ **PERSON'S** business include,
22 but are not limited to, the following:

23 (A) Receipts from tangible and intangible property if the
24 acquisition, rental, lease, management, or disposition of the
25 property constitutes integral parts of the ~~taxpayer's~~ **PERSON'S**
26 regular trade or business operations.

27 (B) Receipts received in the course of the ~~taxpayer's~~ **PERSON'S**

1 trade or business from stock and securities of any foreign or
2 domestic corporation and dividend and interest income.

3 (C) Receipts derived from isolated sales, leases, assignments,
4 licenses, divisions, or other infrequently occurring dispositions,
5 transfers, or transactions involving tangible, intangible, or real
6 property if the property is or was used in the ~~taxpayer's~~ **PERSON'S**
7 trade or business operation.

8 (D) Receipts derived from the sale of an interest in a
9 business that constitutes an integral part of the ~~taxpayer's~~
10 **PERSON'S** regular trade or business.

11 (E) Receipts derived from the lease or rental of real
12 property.

13 (ii) Receipts excluded from gross receipts include, but are not
14 limited to, the following:

15 (A) Receipts derived from investment activity, including
16 interest, dividends, royalties, and gains from an investment
17 portfolio or retirement account, if the investment activity is not
18 part of the ~~taxpayer's~~ **PERSON'S** trade or business.

19 (B) Receipts derived from the disposition of tangible,
20 intangible, or real property held for personal use and enjoyment,
21 such as a personal residence or personal assets.

22 (x) Receipts derived from investment activity **OTHER THAN**
23 **RECEIPTS FROM TRANSACTIONS, ACTIVITIES, AND SOURCES IN THE REGULAR**
24 **COURSE OF THE PERSON'S TRADE OR BUSINESS** by a person that is
25 organized exclusively to conduct investment activity and that does
26 not conduct investment activity for any person other than an
27 individual or a person related to that individual or by a common

1 trust fund established under the collective investment funds act,
2 1941 PA 174, MCL 555.101 to 555.113. For purposes of this
3 subdivision, a person is related to an individual if that person is
4 a spouse, brother or sister, whether of the whole or half blood or
5 by adoption, ancestor, lineal descendent of that individual or
6 related person, or a trust benefiting that individual or 1 or more
7 persons related to that individual.

8 (y) Interest income and dividends derived from obligations or
9 securities of the United States government, this state, or any
10 governmental unit of this state. As used in this subdivision,
11 "governmental unit" means that term as defined in section 3 of the
12 shared credit rating act, 1985 PA 227, MCL 141.1053.

13 (z) Dividends and royalties received or deemed received from a
14 foreign operating entity or a person other than a United States
15 person, including, but not limited to, the amounts determined under
16 section 78 of the internal revenue code and sections 951 to 964 of
17 the internal revenue code, phased in over a 5-year period starting
18 with 50% of that amount in the 2008 tax year, 60% in the 2009 tax
19 year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100%
20 in the 2012 tax year and each tax year thereafter.

21 (aa) To the extent not deducted as purchases from other firms
22 under section 203, each of the following:

23 (i) Sales or use taxes collected from or reimbursed by a
24 consumer or other taxes the taxpayer collected directly from or was
25 reimbursed by a purchaser and remitted to a local, state, or
26 federal tax authority, phased in over a 5-year period starting with
27 50% of that amount in the 2008 tax year, 60% in the 2009 tax year,

1 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the
2 2012 tax year and each tax year thereafter.

3 (ii) In the case of receipts from the sale of cigarettes or
4 tobacco products by a wholesale dealer, retail dealer, distributor,
5 manufacturer, or seller, an amount equal to the federal and state
6 excise taxes paid by any person on or for such cigarettes or
7 tobacco products under subtitle E of the internal revenue code or
8 other applicable state law, phased in over a 3-year period starting
9 with 60% of that amount in the 2008 tax year, 75% in the 2009 tax
10 year, and 100% in the 2010 tax year and each tax year thereafter.

11 (iii) In the case of receipts from the sale of motor fuel by a
12 person with a motor fuel tax license or a retail dealer, an amount
13 equal to federal and state excise taxes paid by any person on such
14 motor fuel under section 4081 of the internal revenue code or under
15 other applicable state law, phased in over a 5-year period starting
16 with 50% of that amount in the 2008 tax year, 60% in the 2009 tax
17 year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100%
18 in the 2012 tax year and each tax year thereafter.

19 (iv) In the case of receipts from the sale of beer, wine, or
20 intoxicating liquor by a person holding a license to sell,
21 distribute, or produce those products, an amount equal to federal
22 and state excise taxes paid by any person on or for such beer,
23 wine, or intoxicating liquor under subtitle E of the internal
24 revenue code or other applicable state law, phased in over a 5-year
25 period starting with 50% of that amount in the 2008 tax year, 60%
26 in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax
27 year, and 100% in the 2012 tax year and each tax year thereafter.

1 (v) In the case of receipts from the sale of communication,
2 video, internet access and related services and equipment, any
3 government imposed tax, fee, or other imposition in the nature of a
4 tax or fee required by law, ordinance, regulation, ruling, or other
5 legal authority and authorized to be charged on a customer's bill
6 or invoice, phased in over a 5-year period starting with 50% of
7 that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in
8 the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012
9 tax year and each tax year thereafter. This subparagraph does not
10 include the recovery of net income taxes, net worth taxes, property
11 taxes, or the tax imposed under this act.

12 (vi) In the case of receipts from the sale of electricity,
13 natural gas, or other energy source, any government imposed tax,
14 fee, or other imposition in the nature of a tax or fee required by
15 law, ordinance, regulation, ruling, or other legal authority and
16 authorized to be charged on a customer's bill or invoice, phased in
17 over a 5-year period starting with 50% of that amount in the 2008
18 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75%
19 in the 2011 tax year, and 100% in the 2012 tax year and each tax
20 year thereafter. This subparagraph does not include the recovery of
21 net income taxes, net worth taxes, property taxes, or the tax
22 imposed under this act.

23 (vii) Any deposit required under any of the following, phased
24 in over a 5-year period starting with 50% of that amount in the
25 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year,
26 75% in the 2011 tax year, and 100% in the 2012 tax year and each
27 tax year thereafter:

1 (A) 1976 IL 1, MCL 445.571 to 445.576.

2 (B) R 436.1629 of the Michigan administrative code.

3 (C) R 436.1723a of the Michigan administrative code.

4 (D) Any substantially similar beverage container deposit law
5 of another state.

6 (viii) An excise tax collected pursuant to the airport parking
7 tax act, 1987 PA 248, MCL 207.371 to 207.383, collected from or
8 reimbursed by a consumer and remitted as provided in the airport
9 parking tax act, 1987 PA 248, MCL 207.371 to 207.383, phased in
10 over a 5-year period starting with 50% of that amount in the 2008
11 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75%
12 in the 2011 tax year, and 100% in the 2012 tax year and each tax
13 year thereafter.

14 (bb) Amounts attributable to an ownership interest in a pass-
15 through entity, regulated investment company, real estate
16 investment trust, or cooperative corporation whose business
17 activities are taxable under section 203 or would be subject to the
18 tax under section 203 if the business activities were in this
19 state. For purposes of this subdivision:

20 (i) "Cooperative corporation" means those organizations
21 described under subchapter T of the internal revenue code.

22 (ii) "Pass-through" entity means a partnership, subchapter S
23 corporation, or other person, other than an individual, that is not
24 classified for federal income tax purposes as an association taxed
25 as a corporation.

26 (iii) "Real estate investment trust" means that term as defined
27 under section 856 of the internal revenue code.

1 (iv) "Regulated investment company" means that term as defined
2 under section 851 of the internal revenue code.

3 (cc) For a regulated investment company as that term is
4 defined under section 851 of the internal revenue code, receipts
5 derived from investment activity by that regulated investment
6 company.

7 (dd) For fiscal years that begin after September 30, 2009,
8 unless the state budget director certifies to the state treasurer
9 by January 1 of that fiscal year that the federally certified rates
10 for actuarial soundness required under 42 CFR 438.6 and that are
11 specifically developed for Michigan's health maintenance
12 organizations that hold a contract with this state for medicaid
13 services provide explicit adjustment for their obligations required
14 for payment of the tax under this act, amounts received by the
15 taxpayer during that fiscal year for medicaid premium or
16 reimbursement of costs associated with service provided to a
17 medicaid recipient or beneficiary.

18 (ee) For a taxpayer that provides health care management
19 consulting services, amounts received by the taxpayer as fees from
20 its clients that are expended by the taxpayer to reimburse those
21 clients for labor and nonlabor services that are paid by the client
22 and reimbursed to the client pursuant to a services agreement.

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

26 (3) "Internal revenue code" means the United States internal
27 revenue code of 1986 in effect on January 1, 2008 or, at the option

1 of the taxpayer, in effect for the tax year.

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

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

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

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

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

4 (i) "Broker" means that term as defined under section 78c(a)(4)
5 of the securities exchange act of 1934, 15 USC 78c.

6 (ii) "Dealer" means that term as defined under section
7 78c(a)(5) of the securities exchange act of 1934, 15 USC 78c.

8 (iii) "Securities trader" means a person that engages in the
9 trade or business of purchasing and selling investments and trading
10 assets.

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

12 (i) Personal property under lease or principally intended for
13 lease rather than sale.

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

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

18 (a) The chairperson of the board.

19 (b) The president, vice president, secretary, or treasurer of
20 the corporation or board.

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

23 Sec. 405. For the 2008 tax year, a taxpayer may claim a credit
24 against the tax imposed by this act equal to 1.52% of the
25 taxpayer's research and development expenses in this state in the
26 tax year. For the 2009 tax year and each tax year after 2009, a
27 taxpayer may claim a credit against the tax imposed by this act

1 equal to 1.90% of the taxpayer's research and development expenses
2 in this state in the tax year. The credit under this section
3 combined with the total combined credit allowed under section 403
4 shall not exceed 65% of the tax liability imposed under this act
5 before the imposition and levy of the surcharge under section 281.
6 As used in this section, "research and development expenses" means
7 **QUALIFIED RESEARCH EXPENSES AS** that term ~~as~~ **IS** defined in section
8 41(b) of the internal revenue code.

9 Sec. 505. (1) An annual or final return shall be filed with
10 the department in the form and content prescribed by the department
11 by the last day of the fourth month after the end of the taxpayer's
12 tax year. Any final liability shall be remitted ~~with this return.~~
13 **BY THE LAST DAY OF THE FOURTH MONTH AFTER THE END OF THE TAXPAYER'S**
14 **TAX YEAR.** A taxpayer, other than a taxpayer subject to the tax
15 imposed under chapter 2A or 2B, whose apportioned or allocated
16 gross receipts are less than \$350,000.00 does not need to file a
17 return or pay the tax imposed under this act.

18 (2) If a taxpayer has apportioned or allocated gross receipts
19 for a tax year of less than 12 months, the amount in subsection (1)
20 shall be multiplied by a fraction, the numerator of which is the
21 number of months in the tax year and the denominator of which is
22 12.

23 (3) The department, upon application of the taxpayer and for
24 good cause shown, may extend the date for filing the annual return.
25 Interest at the rate under section 23(2) of 1941 PA 122, MCL
26 205.23, shall be added to the amount of the tax unpaid for the
27 period of the extension. The treasurer shall require with the

Senate Bill No. 369 (H-2) as amended December 13, 2011

1 application payment of the estimated tax liability unpaid for the
2 tax period covered by the extension.

3 (4) If a taxpayer is granted an extension of time within which
4 to file the federal income tax return for any tax year, the filing
5 of a copy of the request for extension together with a tentative
6 return and payment of an estimated tax with the department by the
7 due date provided in subsection (1) shall automatically extend the
8 due date for the filing of an annual or final return under this act
9 until the last day of the eighth month following the original due
10 date of the return. Interest at the rate under section 23(2) of
11 1941 PA 122, MCL 205.23, shall be added to the amount of the tax
12 unpaid for the period of the extension.

13 SEC. 512. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT
14 EXCEPT AS PROVIDED UNDER SUBSECTIONS (2) AND (3), A PERSON THAT IS
15 A DISREGARDED ENTITY FOR FEDERAL INCOME TAX PURPOSES UNDER THE
16 INTERNAL REVENUE CODE SHALL BE CLASSIFIED AS A DISREGARDED ENTITY
17 FOR PURPOSES OF THIS ACT.

18 (2) NOTWITHSTANDING SUBSECTION (1), A PERSON THAT IS A
19 DISREGARDED ENTITY FOR FEDERAL INCOME TAX PURPOSES UNDER THE
20 INTERNAL REVENUE CODE THAT PRIOR TO JANUARY 1, 2012 [IN AN ORIGINALLY
21 FILED RETURN WAS TREATED AS A PERSON SEPARATE FROM ITS OWNER OR PRIOR TO
22 DECEMBER 1, 2011 IN AN AMENDED RETURN WAS TREATED AS A PERSON] SEPARATE
23 FROM

24 ITS OWNER UNDER THIS ACT FOR A TAX YEAR THAT BEGINS AFTER DECEMBER
25 31, 2007, IS NOT REQUIRED TO FILE AN AMENDED RETURN WITH ITS OWNER
26 AS A DISREGARDED ENTITY.

27 (3) NOTWITHSTANDING SUBSECTION (1), A PERSON THAT IS A
DISREGARDED ENTITY FOR FEDERAL INCOME TAX PURPOSES UNDER THE
INTERNAL REVENUE CODE THAT PRIOR TO JANUARY 1, 2012 [IN AN ORIGINALLY

Senate Bill No. 369 (H-2) as amended December 13, 2011

1 FILED RETURN WAS TREATED AS A PERSON SEPARATE FROM ITS OWNER OR PRIOR TO
DECEMBER 1, 2011 IN AN AMENDED RETURN WAS TREATED AS A PERSON] SEPARATE
FROM
2 ITS OWNER UNDER THIS ACT FOR ITS FIRST TAX YEAR THAT BEGINS AFTER
3 DECEMBER 31, 2009, MAY [BE TREATED AS A PERSON] SEPARATE FROM ITS OWNER
UNDER
4 THIS ACT FOR ITS TAX YEAR THAT BEGINS AFTER DECEMBER 31, 2010 AND
5 ENDS BEFORE JANUARY 1, 2012.

6 Enacting section 1. This amendatory act is curative and
7 intended to clarify the original intent of 2007 PA 36. This
8 amendatory act is retroactive and effective for taxes levied on and
9 after January 1, 2008.