

# HOUSE BILL No. 4091

January 18, 2011, Introduced by Reps. Horn and MacMaster and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled  
"Michigan business tax act,"  
by amending sections 111, 113, 200, 201, 207, 239, 301, 411, 417,  
501, 503, 505, 507, 511, and 601 (MCL 208.1111, 208.1113, 208.1200,  
208.1201, 208.1207, 208.1239, 208.1301, 208.1411, 208.1417,  
208.1501, 208.1503, 208.1505, 208.1507, 208.1511, and 208.1601),  
section 111 as amended by 2010 PA 133, section 113 as amended by  
2008 PA 472, section 201 as amended by 2009 PA 135, section 207 as  
amended by 2008 PA 435, sections 239 and 601 as amended by 2007 PA  
145, section 501 as amended by 2009 PA 9, and section 503 as  
amended by 2009 PA 185; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 111. ~~(1) "Gross receipts" means the entire amount~~  
2 ~~received by the taxpayer as determined by using the taxpayer's~~  
3 ~~method of accounting used for federal income tax purposes, less any~~  
4 ~~amount deducted as bad debt for federal income tax purposes that~~  
5 ~~corresponds to items of gross receipts included in the modified~~  
6 ~~gross receipts tax base for the current tax year or a past tax year~~  
7 ~~phased in over a 5 year period starting with 50% of that amount in~~  
8 ~~the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax~~  
9 ~~year, 75% in the 2011 tax year, and 100% in the 2012 tax year and~~  
10 ~~each tax year thereafter, from any activity whether in intrastate,~~  
11 ~~interstate, or foreign commerce carried on for direct or indirect~~  
12 ~~gain, benefit, or advantage to the taxpayer or to others except for~~  
13 ~~the following:~~

14       ~~—— (a) Proceeds from sales by a principal that the taxpayer~~  
15 ~~collects in an agency capacity solely on behalf of the principal~~  
16 ~~and delivers to the principal.~~

17       ~~—— (b) Amounts received by the taxpayer as an agent solely on~~  
18 ~~behalf of the principal that are expended by the taxpayer for any~~  
19 ~~of the following:~~

20       ~~—— (i) The performance of a service by a third party for the~~  
21 ~~benefit of the principal that is required by law to be performed by~~  
22 ~~a licensed person.~~

23       ~~—— (ii) The performance of a service by a third party for the~~  
24 ~~benefit of the principal that the taxpayer has not undertaken a~~  
25 ~~contractual duty to perform.~~

26       ~~—— (iii) Principal and interest under a mortgage loan or land~~  
27 ~~contract, lease or rental payments, or taxes, utilities, or~~

~~insurance premiums relating to real or personal property owned or leased by the principal.~~

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

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

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

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

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

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

~~—— (f) Notwithstanding any other provision of this section, amounts received by a taxpayer that manages real property owned by~~

~~a third party that are deposited into a separate account kept in the name of that third party and that are not reimbursements to the taxpayer and are not indirect payments for management services that the taxpayer provides to that third party.~~

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

~~—— (h) Proceeds from any of the following:~~

~~—— (i) The original issue of stock or equity instruments or equity issued by a regulated investment company as that term is defined under section 851 of the internal revenue code.~~

~~—— (ii) The original issue of debt instruments.~~

~~—— (i) Refunds from returned merchandise.~~

~~—— (j) Cash and in kind discounts.~~

~~—— (k) Trade discounts.~~

~~—— (l) Federal, state, or local tax refunds.~~

~~—— (m) Security deposits.~~

~~—— (n) Payment of the principal portion of loans.~~

~~—— (o) Value of property received in a like kind exchange.~~

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

1 following.

2 ~~—— (i) The property is a capital asset as defined in section~~  
3 ~~1221(a) of the internal revenue code.~~

4 ~~—— (ii) The property is land that qualifies as property used in~~  
5 ~~the trade or business as defined in section 1231(b) of the internal~~  
6 ~~revenue code.~~

7 ~~—— (iii) The property is used in a hedging transaction entered into~~  
8 ~~by the taxpayer in the normal course of the taxpayer's trade or~~  
9 ~~business primarily to manage the risk of exposure to foreign~~  
10 ~~currency fluctuations that affect assets, liabilities, profits,~~  
11 ~~losses, equity, or investments in foreign operations; interest rate~~  
12 ~~fluctuations; or commodity price fluctuations. For purposes of this~~  
13 ~~subparagraph, the actual transfer of title of real or tangible~~  
14 ~~personal property to another person is not a hedging transaction.~~  
15 ~~Only the overall net gain from the hedging transactions entered~~  
16 ~~into during the tax year is included in gross receipts. As used in~~  
17 ~~this subparagraph, "hedging transaction" means that term as defined~~  
18 ~~under section 1221 of the internal revenue code regardless of~~  
19 ~~whether the transaction was identified by the taxpayer as a hedge~~  
20 ~~for federal income tax purposes, provided, however, that~~  
21 ~~transactions excluded under this subparagraph and not identified as~~  
22 ~~a hedge for federal income tax purposes shall be identifiable to~~  
23 ~~the department by the taxpayer as a hedge in its books and records.~~

24 ~~—— (iv) The property is investment and trading assets managed as~~  
25 ~~part of the person's treasury function. For purposes of this~~  
26 ~~subparagraph, a person principally engaged in the trade or business~~  
27 ~~of purchasing and selling investment and trading assets is not~~

~~performing a treasury function. Only the overall net gain from the treasury function incurred during the tax year is included in gross receipts. As used in this subparagraph, "treasury function" means the pooling and management of investment and trading assets for the purpose of satisfying the cash flow or liquidity needs of the taxpayer's trade or business.~~

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

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

~~—— (s) For a sales finance company, as defined in section 2 of the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.102, and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, and for a person that is a broker or dealer as defined under section 78c(a)(4) or~~

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

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

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

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

~~—— (w) For an individual, estate, or other person organized for estate or gift planning purposes, amounts received other than those~~

~~from transactions, activities, and sources in the regular course of the taxpayer's trade or business. For purposes of this subdivision, all of the following apply:~~

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

~~—— (A) Receipts from tangible and intangible property if the acquisition, rental, lease, management, or disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.~~

~~—— (B) Receipts received in the course of the taxpayer's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.~~

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

~~—— (D) Receipts derived from the sale of an interest in a business that constitutes an integral part of the taxpayer's regular trade or business.~~

~~—— (E) Receipts derived from the lease or rental of real property.~~

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

~~—— (A) Receipts derived from investment activity, including interest, dividends, royalties, and gains from an investment~~



~~portfolio or retirement account, if the investment activity is not part of the taxpayer's trade or business.~~

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

~~—— (x) Receipts derived from investment activity by a person that is organized exclusively to conduct investment activity and that does not conduct investment activity for any person other than an individual or a person related to that individual or by a common trust fund established under the collective investment funds act, 1941 PA 174, MCL 555.101 to 555.113. For purposes of this subdivision, a person is related to an individual if that person is a spouse, brother or sister, whether of the whole or half blood or by adoption, ancestor, lineal descendent of that individual or related person, or a trust benefiting that individual or 1 or more persons related to that individual.~~

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

~~—— (z) Dividends and royalties received or deemed 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, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax~~

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

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

~~—— (i) Sales or use taxes collected from or reimbursed by a consumer or other taxes the taxpayer collected directly from or was reimbursed by a purchaser and remitted to a local, state, or federal tax authority, phased in over a 5 year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.~~

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

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

1 ~~—— (iv) In the case of receipts from the sale of beer, wine, or~~  
2 ~~intoxicating liquor by a person holding a license to sell,~~  
3 ~~distribute, or produce those products, an amount equal to federal~~  
4 ~~and state excise taxes paid by any person on or for such beer,~~  
5 ~~wine, or intoxicating liquor under subtitle E of the internal~~  
6 ~~revenue code or other applicable state law, phased in over a 5-year~~  
7 ~~period starting with 50% of that amount in the 2008 tax year, 60%~~  
8 ~~in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax~~  
9 ~~year, and 100% in the 2012 tax year and each tax year thereafter.~~

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

21 ~~—— (vi) In the case of receipts from the sale of electricity,~~  
22 ~~natural gas, or other energy source, any government imposed tax,~~  
23 ~~fee, or other imposition in the nature of a tax or fee required by~~  
24 ~~law, ordinance, regulation, ruling, or other legal authority and~~  
25 ~~authorized to be charged on a customer's bill or invoice, phased in~~  
26 ~~over a 5-year period starting with 50% of that amount in the 2008~~  
27 ~~tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75%~~

~~in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter. This subparagraph does not include the recovery of net income taxes, net worth taxes, property taxes, or the tax imposed under this act.~~

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

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

~~—— (B) R 436.1629 of the Michigan administrative code.~~

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

~~—— (D) Any substantially similar beverage container deposit law of another state.~~

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

~~—— (bb) Amounts attributable to an ownership interest in a pass-through entity, regulated investment company, real estate investment trust, or cooperative corporation 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~~

1 ~~state. For purposes of this subdivision:~~

2 ~~—— (i) "Cooperative corporation" means those organizations~~  
3 ~~described under subchapter T of the internal revenue code.~~

4 ~~—— (ii) "Pass through" entity means a partnership, subchapter S~~  
5 ~~corporation, or other person, other than an individual, that is not~~  
6 ~~classified for federal income tax purposes as an association taxed~~  
7 ~~as a corporation.~~

8 ~~—— (iii) "Real estate investment trust" means that term as defined~~  
9 ~~under section 856 of the internal revenue code.~~

10 ~~—— (iv) "Regulated investment company" means that term as defined~~  
11 ~~under section 851 of the internal revenue code.~~

12 ~~—— (cc) For a regulated investment company as that term is~~  
13 ~~defined under section 851 of the internal revenue code, receipts~~  
14 ~~derived from investment activity by that regulated investment~~  
15 ~~company.~~

16 ~~—— (dd) For fiscal years that begin after September 30, 2009,~~  
17 ~~unless the state budget director certifies to the state treasurer~~  
18 ~~by January 1 of that fiscal year that the federally certified rates~~  
19 ~~for actuarial soundness required under 42 CFR 438.6 and that are~~  
20 ~~specifically developed for Michigan's health maintenance~~  
21 ~~organizations that hold a contract with this state for medicaid~~  
22 ~~services provide explicit adjustment for their obligations required~~  
23 ~~for payment of the tax under this act, amounts received by the~~  
24 ~~taxpayer during that fiscal year for medicaid premium or~~  
25 ~~reimbursement of costs associated with service provided to a~~  
26 ~~medicaid recipient or beneficiary.~~

27 ~~—— (ee) For a taxpayer that provides health care management~~

~~consulting services, amounts received by the taxpayer as fees from its clients that are expended by the taxpayer to reimburse those clients for labor and nonlabor services that are paid by the client and reimbursed to the client pursuant to a services agreement.~~

(1) ~~(2)~~—"Insurance company" means an authorized insurer as defined in ~~section~~ **SECTIONS 106 AND 108** of the insurance code of 1956, 1956 PA 218, MCL 500.106 **AND 500.108**.

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

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

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

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

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

1 ~~supplier.~~

2 ~~—— (d) For a person that is a securities trader, broker, or~~  
3 ~~dealer or a person included in the unitary business group of that~~  
4 ~~securities trader, broker, or dealer that buys and sells for its~~  
5 ~~own account, contracts that are subject to the commodity exchange~~  
6 ~~act, 7 USC 1 to 27f, the cost of securities as defined under~~  
7 ~~section 475(c)(2) of the internal revenue code and for a securities~~  
8 ~~trader the cost of commodities as defined under section 475(c)(2)~~  
9 ~~and for a broker or dealer the cost of commodities as defined under~~  
10 ~~section 475(c)(2)(b), (c), and (d) of the internal revenue code,~~  
11 ~~excluding interest expense other than interest expense related to~~  
12 ~~repurchase agreements. As used in this subdivision:~~

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

15 ~~—— (ii) "Dealer" means that term as defined under section~~  
16 ~~78c(a)(5) of the securities exchange act of 1934, 15 USC 78c.~~

17 ~~—— (iii) "Securities trader" means a person that engages in the~~  
18 ~~trade or business of purchasing and selling investments and trading~~  
19 ~~assets.~~

20 ~~—— (e) Inventory does not include either of the following:~~

21 ~~—— (i) Personal property under lease or principally intended for~~  
22 ~~lease rather than sale.~~

23 ~~—— (ii) Property allowed a deduction or allowance for depreciation~~  
24 ~~or depletion under the internal revenue code.~~

25 (3) ~~(5)~~ "Officer" means an officer of a corporation other than  
26 a subchapter S corporation, including all of the following:

27 (a) The chairperson of the board.

1 (b) The president, vice president, secretary, or treasurer of  
2 the corporation or board.

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

5 Sec. 113. (1) "Partner" means a partner or member of a  
6 partnership.

7 (2) "Partnership" means a taxpayer that is required to or has  
8 elected to file as a partnership for federal income tax purposes.

9 (3) "Person" means an individual, firm, bank, financial  
10 institution, insurance company, limited partnership, limited  
11 liability partnership, copartnership, partnership, joint venture,  
12 association, corporation, subchapter S corporation, limited  
13 liability company, receiver, estate, trust, or any other group or  
14 combination of groups acting as a unit.

15 (4) "Professional employer organization" means an organization  
16 that provides the management and administration of the human  
17 resources of another entity by contractually assuming substantial  
18 employer rights and responsibilities through a professional  
19 employer agreement that establishes an employer relationship with  
20 the leased officers or employees assigned to the other entity by  
21 doing all of the following:

22 (a) Maintaining a right of direction and control of employees'  
23 work, although this responsibility may be shared with the other  
24 entity.

25 (b) Paying wages and employment taxes of the employees out of  
26 its own accounts.

27 (c) Reporting, collecting, and depositing state and federal



1 employment taxes for the employees.

2 (d) Retaining a right to hire and fire employees.

3 ~~—— (5) Professional employer organization is not a staffing~~  
4 ~~company as that term is defined in subsection (6).~~

5 ~~—— (6) "Purchases from other firms" means all of the following:~~

6 ~~—— (a) Inventory acquired during the tax year, including freight,~~  
7 ~~shipping, delivery, or engineering charges included in the original~~  
8 ~~contract price for that inventory.~~

9 ~~—— (b) Assets, including the costs of fabrication and~~  
10 ~~installation, acquired during the tax year of a type that are, or~~  
11 ~~under the internal revenue code will become, eligible for~~  
12 ~~depreciation, amortization, or accelerated capital cost recovery~~  
13 ~~for federal income tax purposes.~~

14 ~~—— (c) To the extent not included in inventory or depreciable~~  
15 ~~property, materials and supplies, including repair parts and fuel.~~

16 ~~—— (d) For a staffing company, compensation of personnel supplied~~  
17 ~~to customers of staffing companies. As used in this subdivision:~~

18 ~~—— (i) "Compensation" means that term as defined under section 107~~  
19 ~~plus all payroll tax and worker's compensation costs.~~

20 ~~—— (ii) "Staffing company" means a taxpayer whose business~~  
21 ~~activities are included in industry group 736 under the standard~~  
22 ~~industrial classification code as compiled by the United States~~  
23 ~~department of labor.~~

24 ~~—— (e) For a person included in major group 15, 16, or 17 under~~  
25 ~~the standard industrial classification code as compiled by the~~  
26 ~~United States department of labor that does not qualify for a~~  
27 ~~credit under section 417, both of the following:~~

~~1 (i) Payments to subcontractors for a construction project under  
2 a contract specific to that project.~~

~~3 (ii) To the extent not deducted under subdivisions (a) and (c),  
4 payments for materials deducted as purchases in determining the  
5 cost of goods sold for the purpose of calculating total income on  
6 the taxpayer's federal income tax return.~~

~~7 (f) For the 2008 tax year and each tax year after 2008, all  
8 film rental or royalty payments paid by a theater owner to a film  
9 distributor, a film producer, or a film distributor and producer.~~

~~10 (g) For a taxpayer licensed under article 25 or 26 of the  
11 occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and  
12 339.2601 to 339.2637, payments to an independent contractor  
13 licensed under article 25 or 26 of the occupational code, 1980 PA  
14 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637.~~

15 (5) ~~(7)~~ "Revenue mile" means the transportation for a  
16 consideration of 1 net ton in weight or 1 passenger the distance of  
17 1 mile.

18 Sec. 200. (1) Except as otherwise provided in this act or  
19 under subsection (2), a taxpayer has substantial nexus in this  
20 state and is subject to the tax imposed under this act if the  
21 taxpayer has a physical presence in this state for a period of more  
22 than 1 day during the tax year or if the taxpayer actively solicits  
23 sales in this state and has gross receipts of \$350,000.00 or more  
24 sourced to this state.

25 (2) For purposes of this section, "actively solicits" shall be  
26 defined by the department through written guidance that shall be  
27 applied prospectively.

1           (3) As used in this section, "physical presence" means any  
2 activity conducted by the taxpayer or on behalf of the taxpayer by  
3 the taxpayer's employee, agent, or independent contractor acting in  
4 a representative capacity. Physical presence does not include the  
5 activities of professionals providing services in a professional  
6 capacity or other service providers if the activity is not  
7 significantly associated with the taxpayer's ability to establish  
8 and maintain a market in this state.

9           Sec. 201. (1) Except as otherwise provided in this act, there  
10 is levied and imposed a business income tax on every taxpayer with  
11 business activity within this state unless prohibited by 15 USC 381  
12 to 384. The business income tax is imposed on the business income  
13 tax base, after allocation or apportionment to this state, at the  
14 ~~rate of 4.95%.~~ **FOLLOWING RATES:**

15           **(A) FOR TAX YEARS ENDING AFTER DECEMBER 31, 2007 AND BEFORE**  
16 **JANUARY 1, 2012, 4.95%.**

17           **(B) FOR TAX YEARS ENDING AFTER DECEMBER 31, 2011, 6.0%.**

18           (2) The business income tax base means a taxpayer's business  
19 income subject to the following adjustments, before allocation or  
20 apportionment, and the adjustments in subsections (5), (6), and (7)  
21 after allocation or apportionment:

22           (a) Add interest income and dividends derived from obligations  
23 or securities of states other than this state, in the same amount  
24 that was excluded from federal taxable income, less the related  
25 portion of expenses not deducted in computing federal taxable  
26 income because of sections 265 and 291 of the internal revenue  
27 code.

1 (b) Add all taxes on or measured by net income and the tax  
2 imposed under this act to the extent the taxes were deducted in  
3 arriving at federal taxable income.

4 (c) Add any carryback or carryover of a net operating loss to  
5 the extent deducted in arriving at federal taxable income.

6 (d) To the extent included in federal taxable income, deduct  
7 dividends and royalties received from persons other than United  
8 States persons and foreign operating entities, including, but not  
9 limited to, amounts determined under section 78 of the internal  
10 revenue code or sections 951 to 964 of the internal revenue code.

11 (e) To the extent included in federal taxable income, add the  
12 loss or subtract the income from the business income tax base that  
13 is attributable to another entity whose business activities are  
14 taxable under this section or would be subject to the tax under  
15 this section if the business activities were in this state.

16 (f) Except as otherwise provided under this subdivision, to  
17 the extent deducted in arriving at federal taxable income, add any  
18 royalty, interest, or other expense paid to a person related to the  
19 taxpayer by ownership or control for the use of an intangible asset  
20 if the person is not included in the taxpayer's unitary business  
21 group. The addition of any royalty, interest, or other expense  
22 described under this subdivision is not required to be added if the  
23 taxpayer can demonstrate that the transaction has a nontax business  
24 purpose other than avoidance of this tax, is conducted with arm's-  
25 length pricing and rates and terms as applied in accordance with  
26 sections 482 and 1274(d) of the internal revenue code, and  
27 satisfies 1 of the following:

1           (i) Is a pass through of another transaction between a third  
2 party and the related person with comparable rates and terms.

3           (ii) Results in double taxation. For purposes of this  
4 subparagraph, double taxation exists if the transaction is subject  
5 to tax in another jurisdiction.

6           (iii) Is unreasonable as determined by the treasurer, and the  
7 taxpayer agrees that the addition would be unreasonable based on  
8 the taxpayer's facts and circumstances.

9           (iv) The related person recipient of the transaction is  
10 organized under the laws of a foreign nation which has in force a  
11 comprehensive income tax treaty with the United States.

12           (g) To the extent included in federal taxable income, deduct  
13 interest income derived from United States obligations.

14           (h) To the extent included in federal taxable income, deduct  
15 any earnings that are net earnings from self-employment as defined  
16 under section 1402 of the internal revenue code of the taxpayer or  
17 a partner or limited liability company member of the taxpayer  
18 except to the extent that those net earnings represent a reasonable  
19 return on capital.

20           (i) Subject to the limitation provided under this subdivision,  
21 if the book-tax differences for the first fiscal period ending  
22 after July 12, 2007 result in a deferred liability for a person  
23 subject to tax under this act, deduct the following percentages of  
24 the total book-tax difference for each qualifying asset, for each  
25 of the successive 15 tax years beginning with the 2015 tax year:

26           (i) For the 2015 through 2019 tax years, 4%.

27           (ii) For the 2020 through 2024 tax years, 6%.

1 (iii) For the 2025 through 2029 tax years, 10%.

2 (j) For tax years that begin after December 31, 2009, to the  
3 extent included in federal taxable income, deduct the amount of a  
4 charitable contribution made to the advance tuition payment fund  
5 created under section 9 of the Michigan education trust act, 1986  
6 PA 316, MCL 390.1429.

7 (3) The deduction under subsection (2)(i) shall not exceed the  
8 amount necessary to offset the net deferred tax liability of the  
9 taxpayer as computed in accordance with generally accepted  
10 accounting principles which would otherwise result from the  
11 imposition of the business income tax under this section ~~and the~~  
12 ~~modified gross receipts tax under section 203~~ if the deduction  
13 provided under this subdivision were not allowed. ~~The deduction~~  
14 ~~under subsection (2)(i) is intended to flow through and reduce the~~  
15 ~~surcharge imposed and levied under section 281.~~ For purposes of the  
16 calculation of the deduction under subsection (2)(i), a book-tax  
17 difference shall only be used once in the calculation of the  
18 deduction arising from the taxpayer's business income tax base  
19 under this section. ~~and once in the calculation of the deduction~~  
20 ~~arising from the taxpayer's modified gross receipts tax base under~~  
21 ~~section 203.~~ The adjustment under subsection (2)(i) shall be  
22 calculated without regard to the federal effect of the deduction.  
23 If the adjustment under subsection (2)(i) is greater than the  
24 taxpayer's business income tax base, any adjustment that is unused  
25 may be carried forward and applied as an adjustment to the  
26 taxpayer's business income tax base before apportionment in future  
27 years. In order to claim this deduction, the department may require

1 the taxpayer to report the amount of this deduction on a form as  
2 prescribed by the department that is to be filed on or after the  
3 date that the first quarterly return and estimated payment are due  
4 under this act. As used in subsection (2)(i) and this subsection:

5 (a) "Book-tax difference" means the difference, if any,  
6 between the person's qualifying asset's net book value shown on the  
7 person's books and records for the first fiscal period ending after  
8 July 12, 2007 and the qualifying asset's tax basis on that same  
9 date.

10 (b) "Qualifying asset" means any asset shown on the person's  
11 books and records for the first fiscal period ending after July 12,  
12 2007, in accordance with generally accepted accounting principles.

13 (4) For purposes of subsections (2) and (3), the business  
14 income of a unitary business group is the sum of the business  
15 income of each person, other than a foreign operating entity or a  
16 person subject to the tax imposed under chapter 2A or 2B, included  
17 in the unitary business group less any items of income and related  
18 deductions arising from transactions including dividends between  
19 persons included in the unitary business group.

20 (5) Deduct any available business loss incurred after December  
21 31, 2007. As used in this subsection, "business loss" means a  
22 negative business income taxable amount after allocation or  
23 apportionment. The business loss shall be carried forward to the  
24 year immediately succeeding the loss year as an offset to the  
25 allocated or apportioned business income tax base, then  
26 successively to the next 9 taxable years following the loss year or  
27 until the loss is used up, whichever occurs first, but for not more

1 than 10 taxable years after the loss year.

2 (6) Deduct any gain from the sale of any residential rental  
3 units in this state to a qualified affordable housing project that  
4 enters an agreement to operate the residential rental units as rent  
5 restricted units for a minimum of 15 years. If the qualified  
6 affordable housing project does not agree to operate all of the  
7 residential rental units as rent restricted units, the deduction  
8 under this subsection is limited to an amount equal to the gain  
9 from the sale multiplied by a fraction, the numerator of which is  
10 the number of those residential rental units purchased that are to  
11 be operated as a rent restricted unit and the denominator is the  
12 number of all residential rental units purchased. In order to claim  
13 this deduction, the department may require the taxpayer and the  
14 qualified affordable housing project to report the amount of this  
15 deduction on a form as prescribed by the department that is to be  
16 signed by both the taxpayer and the qualified affordable housing  
17 project and filed with the taxpayer's annual return. The department  
18 shall record a lien against the property subject to the operation  
19 agreement for the total amount of the deduction allowed under this  
20 subsection. The department shall notify the qualified affordable  
21 housing project of the maximum amount of the lien that the  
22 qualified affordable housing project may be liable for if the  
23 qualified affordable housing project fails to qualify and operate  
24 as provided in the operation agreement within 15 years after the  
25 purchase. The lien shall become payable in an amount as provided  
26 under this subsection to the state by the qualified affordable  
27 housing project if the qualified affordable housing project fails



1 to qualify as a qualified affordable housing project and fails to  
2 operate all or some of the residential rental units as rent  
3 restricted units in accordance with the operation agreement entered  
4 upon the purchase of those units within 15 years after the  
5 deduction is claimed by a taxpayer under this subsection. An amount  
6 equal to the product of 100% of the amount of the deduction allowed  
7 under this subsection multiplied by a fraction, the numerator of  
8 which is the difference between 15 and the number of years the  
9 affordable housing project qualified and operated rent restricted  
10 units in accordance with the agreement and the denominator is 15,  
11 shall be added back to the tax liability of the qualified  
12 affordable housing project for the tax year that the qualified  
13 affordable housing project fails to comply with the agreement.

14 (7) Subject to the limitations provided in this subsection,  
15 for a person that is a qualified affordable housing project, deduct  
16 an amount equal to the product of that person's taxable income that  
17 is attributable to residential rental units in this state owned by  
18 the qualified affordable housing project multiplied by a fraction,  
19 the numerator of which is the number of rent restricted units in  
20 this state owned by that qualified affordable housing project and  
21 the denominator of which is the number of all residential rental  
22 units in this state owned by the qualified affordable housing  
23 project. The amount of the deduction calculated under this  
24 subsection shall be reduced by the amount of limited dividends or  
25 other distributions made to the partners, members, or shareholders  
26 of the qualified affordable housing project. Taxable income that is  
27 attributable to residential rental units does not include income

1 received by the management, construction, or development company  
2 for completion and operation of the project and those rental units.

3 (8) If a qualified affordable housing project no longer meets  
4 the requirements of subsection (9)(b) or fails to operate those  
5 residential rental units as rent restricted units in accordance  
6 with the operation agreement and the requirements of subsection  
7 (9)(c), the taxpayer is entitled to the deductions under  
8 subsections (6) and (7) as long as the qualified affordable housing  
9 project continues to offer some of the residential rental units  
10 purchased as rent restricted units in accordance with the operation  
11 agreement.

12 (9) For purposes of subsections (6), (7), and (8) and this  
13 subsection:

14 (a) "Limited dividend housing association" means a limited  
15 dividend housing association, corporation, or cooperative organized  
16 and qualified pursuant to chapter 7 of the state housing  
17 development authority act of 1966, 1966 PA 346, MCL 125.1491 to  
18 125.1496.

19 (b) "Qualified affordable housing project" means a person that  
20 is organized, qualified, and operated as a limited dividend housing  
21 association that has a limitation on the amount of dividends or  
22 other distributions that may be distributed to its owners in any  
23 given year and has received funding, subsidies, grants, operating  
24 support, or construction or permanent funding through 1 or more of  
25 the following sources and programs:

26 (i) Mortgage or other financing provided by the Michigan state  
27 housing development authority created in section 21 of the state

1 housing development authority act of 1966, 1966 PA 346, MCL  
2 125.1421, the United States department of housing and urban  
3 development, the United States department of agriculture for rural  
4 housing service, the Michigan interfaith housing trust fund,  
5 Michigan housing and community development fund, federal home loan  
6 bank, housing commission loan, community development financial  
7 institution, or mortgage or other funding or guaranteed by Fannie,  
8 Ginnie, federal housing association, United States department of  
9 agriculture, or federal home loan mortgage corporation.

10 (ii) A tax-exempt bond issued by a nonprofit organization,  
11 local governmental unit, or other authority.

12 (iii) A payment in lieu of tax agreement or other tax abatement.

13 (iv) Funding from the state or a local governmental unit  
14 through a HOME investments partnership program authorized under 42  
15 USC 12741 to 12756.

16 (v) A grant or other funding from a federal home loan bank's  
17 affordable housing program.

18 (vi) Financing or funding under the new markets tax credit  
19 program under section 45D of the internal revenue code.

20 (vii) Financed in whole or in part under the United States  
21 department of housing and urban development's hope VI program as  
22 authorized by section 803 of the national affordable housing act,  
23 42 USC 8012.

24 (viii) Financed in whole or in part under the United States  
25 department of housing and urban development's section 202 program  
26 authorized by section 202 of the national housing act, 12 USC  
27 1701q.

1           (ix) Financing or funding under the low-income housing tax  
2 credit program under section 42 of the internal revenue code.

3           (x) Financing or other subsidies from any new programs similar  
4 to any of the above.

5           (c) "Rent restricted unit" means any residential rental unit's  
6 rental income is restricted in accordance with section 42(g)(1) of  
7 the internal revenue code as if it was a qualified low-income  
8 housing project, or receives rental assistance in the form of HUD  
9 section 8 subsidies or HUD housing assistance program subsidies, or  
10 rental assistance from the United States department of agriculture  
11 rural housing programs, or from any of the other programs described  
12 under subdivision (b).

13           Sec. 207. (1) Except as otherwise provided in this section,  
14 the following are exempt from the tax imposed by this act:

15           (a) The United States, this state, other states, and the  
16 agencies, political subdivisions, and enterprises of the United  
17 States, this state, and other states, including any grantor trust  
18 established by a municipality with the municipality as the grantor  
19 and exempt from federal income tax under the internal revenue code.

20           (b) A person who is exempt from federal income tax under the  
21 internal revenue code, and a partnership, limited liability  
22 company, joint venture, general partnership, limited partnership,  
23 unincorporated association, or other group or combination of  
24 entities acting as a unit if the activities of the entity are  
25 exclusively related to the charitable, educational, or other  
26 purpose or function that is the basis for the exemption under the  
27 internal revenue code from federal income taxation of the partners

1 or members and if all of the partners or members of the entity are  
2 exempt from federal income tax under the internal revenue code,  
3 except the following:

4 (i) An organization included under section 501(c)(12) or  
5 501(c)(16) of the internal revenue code.

6 (ii) An organization exempt under section 501(c)(4) of the  
7 internal revenue code that would be exempt under section 501(c)(12)  
8 of the internal revenue code except that it failed to meet the  
9 requirements in section 501(c)(12) that 85% or more of its income  
10 consist of amounts collected from members.

11 (iii) The tax base attributable to the activities giving rise to  
12 the unrelated taxable business income of an exempt person.

13 (c) A nonprofit cooperative housing corporation. As used in  
14 this subdivision, "nonprofit cooperative housing corporation" means  
15 a cooperative housing corporation that is engaged in providing  
16 housing services to its stockholders and members and that does not  
17 pay dividends or interest on stock or membership investment but  
18 that does distribute all earnings to its stockholders or members.  
19 The exemption under this subdivision does not apply to a business  
20 activity of a nonprofit cooperative housing corporation other than  
21 providing housing services to its stockholders and members.

22 (d) That portion of the tax base attributable to the  
23 production of agricultural goods by a person whose primary activity  
24 is the production of agricultural goods. "Production of  
25 agricultural goods" means commercial farming, including, but not  
26 limited to, cultivation of the soil; growing and harvesting of an  
27 agricultural, horticultural, or floricultural commodity; dairying;

1 raising of livestock, bees, fish, fur-bearing animals, or poultry;  
2 or turf or tree farming, but does not include the marketing at  
3 retail of agricultural goods except for sales of nursery stock  
4 grown by the seller and sold to a nursery dealer licensed under  
5 section 9 of the insect pest and plant disease act, 1931 PA 189,  
6 MCL 286.209.

7 (e) Except as provided in subsection (2), a farmers'  
8 cooperative corporation organized within the limitations of section  
9 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under  
10 subdivision (b) because the corporation was exempt from federal  
11 income taxes under section 521 of the internal revenue code and  
12 that would continue to be exempt under section 521 of the internal  
13 revenue code except for either of the following activities:

14 (i) The corporation's repurchase from nonproducer customers of  
15 portions or components of commodities the corporation markets to  
16 those nonproducer customers and the corporation's subsequent  
17 manufacturing or marketing of the repurchased portions or  
18 components of the commodities.

19 (ii) The corporation's incidental or emergency purchases of  
20 commodities from nonproducers to facilitate the manufacturing or  
21 marketing of commodities purchased from producers.

22 (f) That portion of the tax base attributable to the direct  
23 and indirect marketing activities of a farmers' cooperative  
24 corporation organized within the limitations of section 98 of 1931  
25 PA 327, MCL 450.98, if those marketing activities are provided on  
26 behalf of the members of that corporation and are related to the  
27 members' direct sales of their products to third parties or, for

1 livestock, are related to the members' direct or indirect sales of  
2 that product to third parties. Marketing activities for a product  
3 that is not livestock are not exempt under this subdivision if the  
4 farmers' cooperative corporation takes physical possession of the  
5 product. As used in this subdivision, "marketing activities" means  
6 activities that include, but are not limited to, all of the  
7 following:

8 (i) Activities under the agricultural commodities marketing  
9 act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural  
10 marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726.

11 (ii) Dissemination of market information.

12 (iii) Establishment of price and other terms of trade.

13 (iv) Promotion.

14 (v) Research relating to members' products.

15 (g) That portion of the tax base attributable to the services  
16 provided by an attorney-in-fact to a reciprocal insurer pursuant to  
17 chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200  
18 to 500.7234.

19 (h) That portion of the tax base attributable to a multiple  
20 employer welfare arrangement that provides dental benefits only and  
21 that has a certificate of authority under chapter 70 of the  
22 insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

23 (i) A foreign person is not subject to taxation under this act  
24 if the foreign person is domiciled in a subnational jurisdiction  
25 that does not impose an income tax on a similarly situated person  
26 domiciled in this state whose presence in the foreign country is  
27 the same as the foreign person's presence in the United States. If

1 a foreign person is domiciled in a subnational jurisdiction that  
2 does not impose an income tax on businesses, but instead imposes  
3 some other type of subnational business tax, that foreign person is  
4 not subject to taxation under this act if that subnational business  
5 tax is not imposed on a similarly situated person domiciled in this  
6 state whose presence in the foreign country is the same as the  
7 foreign person's presence in the United States.

8 (2) Subsection (1)(e) does not exempt a farmers' cooperative  
9 corporation if the total dollar value of the farmers' cooperative  
10 corporation's incidental and emergency purchases described in  
11 subsection (1)(e)(ii) are equal to or greater than 5% of the  
12 corporation's total purchases.

13 (3) Except as otherwise provided in this section, a farmers'  
14 cooperative corporation that is structured to allocate net earnings  
15 in the form of patronage dividends as defined in section 1388 of  
16 the internal revenue code to its farmer or farmer cooperative  
17 corporation patrons shall exclude from its adjusted tax base the  
18 revenue and expenses attributable to business transacted with its  
19 farmer or farmer cooperative corporation patrons.

20 (4) Notwithstanding any other provision of this act to the  
21 contrary, a foreign person subject to tax under this act shall  
22 calculate its business income tax base ~~and modified gross receipts~~  
23 ~~tax base~~ under this section. Except as otherwise provided in this  
24 section, the business income tax base ~~and modified gross receipts~~  
25 ~~tax base~~ of a foreign person is subject to all adjustments and  
26 other provisions of this act. However, ~~neither~~ the business income  
27 tax base ~~nor the modified gross receipts tax base~~ shall **NOT** include



1 proceeds from sales where title passes outside the United States.

2 ~~—— (5) Except as otherwise provided in this section, the modified~~  
3 ~~gross receipts tax base of a foreign person includes the sum of~~  
4 ~~gross receipts and the adjustments under section 203 that are~~  
5 ~~related to United States business activity.~~

6 (5) ~~(6)~~ Except as otherwise provided in this section, the  
7 business income tax base of a foreign person includes the sum of  
8 business income and the adjustments under section 201 that are  
9 related to United States business activity.

10 (6) ~~(7)~~ The sales factor for a foreign person is a fraction,  
11 the numerator of which is the taxpayer's total sales in this state  
12 where title passes inside the United States during the tax year and  
13 the denominator of which is the taxpayer's total sales in the  
14 United States where title passes inside the United States during  
15 the tax year.

16 (7) ~~(8)~~ As used in this section:

17 (a) "Business income" means, for a foreign person, gross  
18 income attributable to the taxpayer's United States business  
19 activity and gross income derived from sources within the United  
20 States minus the deductions allowed under the internal revenue code  
21 that are related to that gross income. Gross income includes the  
22 proceeds from sales shipped or delivered to any purchaser within  
23 the United States and for which title transfers within the United  
24 States; proceeds from services performed within the United States;  
25 and a pro rata proportion of the proceeds from services performed  
26 both within and outside the United States to the extent the  
27 recipient receives benefit of the services within the United

1 States.

2 (b) "Domiciled" means the location of the headquarters of the  
3 trade or business from which the trade or business of the foreign  
4 person is principally managed and directed.

5 (c) For subsection (1)(b), "exclusively" means that term as  
6 applied for purposes of section 501(c)(3) of the internal revenue  
7 code.

8 (d) "Foreign person" means either of the following:

9 (i) An individual who is not a United States resident, whether  
10 or not the individual is subject to taxation under the internal  
11 revenue code.

12 (ii) A person formed under the laws of a foreign country or a  
13 political subdivision of a foreign country, whether or not the  
14 person is subject to taxation under the internal revenue code.

15 ~~— (e) "Gross receipts" means, for a foreign person, gross~~  
16 ~~receipts as defined in section 111(1) from United States business~~  
17 ~~activity or from sources within the United States. Gross receipts~~  
18 ~~include all sales for which title transfers within the United~~  
19 ~~States; proceeds from all services performed within the United~~  
20 ~~States; and a pro rata portion of proceeds from services performed~~  
21 ~~both within and outside of the United States to the extent the~~  
22 ~~recipient receives benefit of the services within the United~~  
23 ~~States.~~

24 Sec. 239. ~~(1)~~ An insurance company shall be allowed a credit  
25 against the tax imposed under this chapter in an amount equal to  
26 50% of the examination fees paid by the insurance company during  
27 the tax year pursuant to section 224 of the insurance code of 1956,

1 1956 PA 218, MCL 500.224.

2 ~~—— (2) An insurance company may claim a credit against the tax~~  
3 ~~imposed under this act as provided under section 403(2), not to~~  
4 ~~exceed 65% of the insurance company's tax liability for the tax~~  
5 ~~year after claiming the other credits allowed by this chapter.~~

6 Sec. 301. (1) Except as otherwise provided in this act, ~~each~~  
7 **THE** tax base established under this act shall be apportioned in  
8 accordance with this chapter.

9 (2) ~~Each~~**THE** tax base of a taxpayer whose business activities  
10 are confined solely to this state shall be allocated to this state.  
11 ~~Each~~**THE** tax base of a taxpayer whose business activities are  
12 subject to tax both within and outside of this state shall be  
13 apportioned to this state by multiplying ~~each~~**THE** tax base by the  
14 sales factor calculated under section 303.

15 (3) A taxpayer whose business activities are subject to tax  
16 both within and outside of this state is subject to tax in another  
17 state in either of the following circumstances:

18 (a) The taxpayer is subject to a business privilege tax, a net  
19 income tax, a franchise tax measured by net income, a franchise tax  
20 for the privilege of doing business, or a corporate stock tax or a  
21 tax of the type imposed under this act in that state.

22 (b) That state has jurisdiction to subject the taxpayer to 1  
23 or more of the taxes listed in subdivision (a) regardless of  
24 whether that state does or does not subject the taxpayer to that  
25 tax.

26 Sec. 411. A taxpayer whose ~~gross receipts~~**SALES** allocated or  
27 apportioned to this state are greater than \$350,000.00 but less

1 than \$700,000.00, may claim a credit against the tax imposed under  
2 this act equal to the tax liability after the credit under section  
3 417 multiplied by a fraction the numerator of which is the  
4 difference between the person's allocated or apportioned ~~gross~~  
5 ~~receipts~~**SALES** and \$700,000.00 and the denominator of which is  
6 \$350,000.00.

7       Sec. 417. (1) The credit provided in this section shall be  
8 taken after the credits under sections 403 and 405 and before any  
9 other credit under this act and is available to any taxpayer with  
10 ~~gross receipts~~**SALES** that do not exceed \$20,000,000.00 and with  
11 adjusted business income minus the loss adjustment that does not  
12 exceed \$1,300,000.00 as adjusted annually for inflation using the  
13 Detroit consumer price index and subject to the following:

14       (a) An individual, a partnership, a limited liability company,  
15 or a subchapter S corporation is disqualified if the individual,  
16 any 1 partner of the partnership, any 1 member of the limited  
17 liability company, or any 1 shareholder of the subchapter S  
18 corporation receives more than \$180,000.00 as a distributive share  
19 of the adjusted business income minus the loss adjustment of the  
20 individual, the partnership, the limited liability company, or the  
21 subchapter S corporation.

22       (b) A corporation other than a subchapter S corporation is  
23 disqualified if either of the following occur for the respective  
24 tax year:

25       (i) Compensation and directors' fees of a shareholder or  
26 officer exceed \$180,000.00.

27       (ii) The sum of the following amounts exceeds \$180,000.00:

1 (A) Compensation and directors' fees of a shareholder.

2 (B) The product of the percentage of outstanding ownership or  
3 of outstanding stock owned by that shareholder multiplied by the  
4 difference between the sum of business income and, to the extent  
5 deducted in determining federal taxable income, a carryback or a  
6 carryover of a net operating loss or capital loss, minus the loss  
7 adjustment.

8 (c) Subject to the reduction percentage determined under  
9 subsection (3), the credit determined under this subsection shall  
10 be reduced by the following percentages in the following  
11 circumstances:

12 (i) If an individual, any 1 partner of the partnership, any 1  
13 member of the limited liability company, or any 1 shareholder of  
14 the subchapter S corporation receives as a distributive share of  
15 adjusted business income minus the loss adjustment of the  
16 individual, partnership, limited liability company, or subchapter S  
17 corporation; if compensation and directors' fees of a shareholder  
18 or officer of a corporation other than a subchapter S corporation  
19 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
20 is more than \$160,000.00 but less than \$165,000.00, the credit is  
21 reduced by 20%.

22 (ii) If an individual, any 1 partner of the partnership, any 1  
23 member of the limited liability company, or any 1 shareholder of  
24 the subchapter S corporation receives as a distributive share of  
25 adjusted business income minus the loss adjustment of the  
26 individual, partnership, limited liability company, or subchapter S  
27 corporation; if compensation and directors' fees of a shareholder

1 or officer of a corporation other than a subchapter S corporation  
2 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
3 is \$165,000.00 or more but less than \$170,000.00, the credit is  
4 reduced by 40%.

5 (iii) If an individual, any 1 partner of the partnership, any 1  
6 member of the limited liability company, or any 1 shareholder of  
7 the subchapter S corporation receives as a distributive share of  
8 adjusted business income minus the loss adjustment of the  
9 individual, partnership, limited liability company, or subchapter S  
10 corporation; if compensation and directors' fees of a shareholder  
11 or officer of a corporation other than a subchapter S corporation  
12 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
13 is \$170,000.00 or more but less than \$175,000.00, the credit is  
14 reduced by 60%.

15 (iv) If an individual, any 1 partner of the partnership, any 1  
16 member of the limited liability company, or any 1 shareholder of  
17 the subchapter S corporation receives as a distributive share of  
18 adjusted business income minus the loss adjustment of the  
19 individual, partnership, limited liability company, or subchapter S  
20 corporation; if compensation and directors' fees of a shareholder  
21 or officer of a corporation other than a subchapter S corporation  
22 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
23 is \$175,000.00 or more but not in excess of \$180,000.00, the credit  
24 is reduced by 80%.

25 (2) For the purposes of determining disqualification under  
26 subsection (1), an active shareholder's share of business income  
27 shall not be attributed to another active shareholder.

1           (3) To determine the reduction percentage under subsection  
2   (1)(c), the following apply:

3           (a) The reduction percentage for a partnership, limited  
4   liability company, or subchapter S corporation is based on the  
5   distributive share of adjusted business income minus loss  
6   adjustment of the partner, member, or shareholder with the greatest  
7   distributive share of adjusted business income minus loss  
8   adjustment.

9           (b) The reduction percentage for a corporation other than a  
10   subchapter S corporation is the greater of the following:

11           (i) The reduction percentage based on the compensation and  
12   directors' fees of the shareholder or officer with the greatest  
13   amount of compensation and directors' fees.

14           (ii) The reduction percentage based on the sum of the amounts  
15   in subsection (1)(b)(ii)(A) and (B) for the shareholder or officer  
16   with the greatest sum of the amounts in subsection (1)(b)(ii)(A) and  
17   (B).

18           (4) A taxpayer that qualifies under subsection (1) is allowed  
19   a credit against the tax imposed under this act. The credit under  
20   this subsection is the amount by which the tax imposed under this  
21   act exceeds 1.8% of adjusted business income.

22           (5) If ~~gross receipts~~ **SALES** exceed \$19,000,000.00, the credit  
23   shall be reduced by a fraction, the numerator of which is the  
24   amount of ~~gross receipts~~ **SALES** over \$19,000,000.00 and the  
25   denominator of which is \$1,000,000.00. The credit shall not exceed  
26   100% of the tax liability imposed under this act.

27           (6) For a taxpayer that reports for a tax year less than 12

1 months, the amounts specified in this section for ~~gross receipts~~  
2 **SALES**, adjusted business income, and share of business income shall  
3 be multiplied by a fraction, the numerator of which is the number  
4 of months in the tax year and the denominator of which is 12.

5 (7) The department shall permit a taxpayer that elects to  
6 claim the credit allowed under this section based on the amount by  
7 which the tax imposed under this act exceeds the percentage of  
8 adjusted business income for the tax year as determined under  
9 subsection (4), and that is not required to reduce the credit  
10 pursuant to subsection (1) or (5), to file and pay the tax imposed  
11 by this act without computing the tax imposed under sections 201  
12 and 203.

13 (8) Compensation paid by the professional employer  
14 organization to the officers of the client and to employees of the  
15 professional employer organization who are assigned or leased to  
16 and perform services for the client shall be included in  
17 determining eligibility of the client under this section.

18 (9) As used in this section:

19 (a) "Active shareholder" means a shareholder who receives at  
20 least \$10,000.00 in compensation, directors' fees, or dividends  
21 from the business, and who owns at least 5% of the outstanding  
22 stock or other ownership interest.

23 (b) "Adjusted business income" means business income as  
24 defined in section 105 with all of the following adjustments:

25 (i) Add compensation and directors' fees of active shareholders  
26 of a corporation.

27 (ii) Add, to the extent deducted in determining federal taxable



1 income, a carryback or a carryover of a net operating loss.

2 (iii) Add, to the extent deducted in determining federal taxable  
3 income, a capital loss.

4 (iv) Add compensation and directors' fees of officers of a  
5 corporation.

6 (c) "Detroit consumer price index" means the most  
7 comprehensive index of consumer prices available for the Detroit  
8 area from the United States department of labor, bureau of labor  
9 statistics.

10 (d) "Loss adjustment" means the amount by which adjusted  
11 business income was less than zero in any of the 5 tax years  
12 immediately preceding the tax year for which eligibility for the  
13 credit under this section is being determined. In determining the  
14 loss adjustment for a tax year, a taxpayer is not required to use  
15 more of the taxpayer's total negative adjusted business income than  
16 the amount needed to qualify the taxpayer for the credit under this  
17 section. A taxpayer shall not be considered to have used any  
18 portion of the taxpayer's negative adjusted business income amount  
19 unless the portion used is necessary to qualify for the credit  
20 under this section. A taxpayer shall not reuse a negative adjusted  
21 business income amount used as a loss adjustment in a previous tax  
22 year or use a negative adjusted business income amount from a year  
23 in which the taxpayer did not receive the credit under this  
24 section.

25 Sec. 501. (1) A taxpayer that reasonably expects liability for  
26 the tax year to exceed \$800.00 shall file an estimated return and  
27 pay an estimated tax for each quarter of the taxpayer's tax year.

1           (2) For taxpayers on a calendar year basis, the quarterly  
2 returns and estimated payments shall be made by April 15, July 15,  
3 October 15, and January 15. Taxpayers not on a calendar year basis  
4 shall file quarterly returns and make estimated payments on the  
5 appropriate due date which in the taxpayer's fiscal year  
6 corresponds to the calendar year.

7           (3) Except as otherwise provided under this subsection, the  
8 estimated payment made with each quarterly return of each tax year  
9 shall be for the estimated business income tax base ~~and modified~~  
10 ~~gross receipts tax base~~ for the quarter or 25% of the estimated  
11 annual liability. The second, third, and fourth estimated payments  
12 in each tax year shall include adjustments, if necessary, to  
13 correct underpayments or overpayments from previous quarterly  
14 payments in the tax year to a revised estimate of the annual tax  
15 liability. For a taxpayer that calculates and pays estimated  
16 payments for federal income tax purposes pursuant to section  
17 6655(e) of the internal revenue code, that taxpayer may use the  
18 same methodology as used to calculate the annualized income  
19 installment or the adjusted seasonal installment, whichever is used  
20 as the basis for the federal estimated payment, to calculate the  
21 estimated payments required each quarter under this section. A  
22 penalty for underpayment of an estimated tax under this act shall  
23 not be assessed for a tax year that ends before December 1, 2009 if  
24 the taxpayer paid 75% of the tax due under this act for the tax  
25 year.

26           (4) The interest provided by this act shall not be assessed if  
27 any of the following occur:

1 (a) If the sum of the estimated payments equals at least 85%  
2 of the liability and the amount of each estimated payment  
3 reasonably approximates the tax liability incurred during the  
4 quarter for which the estimated payment was made.

5 (b) For the 2009 tax year and each subsequent tax year, if the  
6 preceding year's tax liability under this act was \$20,000.00 or  
7 less and if the taxpayer submitted 4 equal installments the sum of  
8 which equals the immediately preceding tax year's tax liability.

9 (5) Each estimated return shall be made on a form prescribed  
10 by the department and shall include an estimate of the annual tax  
11 liability and other information required by the state treasurer.  
12 The form prescribed under this subsection may be combined with any  
13 other tax reporting form prescribed by the department.

14 (6) With respect to a taxpayer filing an estimated tax return  
15 for the taxpayer's first tax year of less than 12 months, the  
16 amounts paid with each return shall be proportional to the number  
17 of payments made in the first tax year.

18 (7) Payments made under this section shall be a credit against  
19 the payment required with the annual tax return required in section  
20 505.

21 (8) If the department considers it necessary to insure payment  
22 of the tax or to provide a more efficient administration of the  
23 tax, the department may require filing of the returns and payment  
24 of the tax for other than quarterly or annual periods.

25 (9) A taxpayer that elects under the internal revenue code to  
26 file an annual federal income tax return by March 1 in the year  
27 following the taxpayer's tax year and does not make a quarterly

1 estimate or payment, or does not make a quarterly estimate or  
2 payment and files a tentative annual return with a tentative  
3 payment by January 15 in the year following the taxpayer's tax year  
4 and a final return by April 15 in the year following the taxpayer's  
5 tax year, has the same option in filing the estimated and annual  
6 returns required by this act.

7       Sec. 503. If a taxpayer's tax year to which this act applies  
8 ends before December 31, 2008 or if a taxpayer's first tax year is  
9 less than 12 months then a taxpayer subject to this act may elect  
10 to compute the tax imposed by this act for the portion of that tax  
11 year to which this act applies or that first tax year in accordance  
12 with 1 of the following methods:

13       (a) The tax may be computed as if this act were effective on  
14 the first day of the taxpayer's annual accounting period and the  
15 amount computed shall be multiplied by a fraction, the numerator of  
16 which is the number of months in the taxpayer's first tax year and  
17 the denominator of which is the number of months in the taxpayer's  
18 annual accounting period.

19       (b) The tax may be computed by determining the business income  
20 tax base ~~and modified gross receipts tax base~~ in the first tax year  
21 in accordance with an accounting method satisfactory to the  
22 department that reflects the actual business income tax base ~~and~~  
23 ~~modified gross receipts tax base~~ attributable to the period.

24       Sec. 505. (1) An annual or final return shall be filed with  
25 the department in the form and content prescribed by the department  
26 by the last day of the fourth month after the end of the taxpayer's  
27 tax year. Any final liability shall be remitted with this return. A

1 taxpayer, other than a taxpayer subject to the tax imposed under  
2 chapter 2A or 2B, whose apportioned or allocated ~~gross receipts~~  
3 **SALES** are less than \$350,000.00 does not need to file a return or  
4 pay the tax imposed under this act.

5 (2) If a taxpayer has apportioned or allocated ~~gross receipts~~  
6 **SALES** for a tax year of less than 12 months, the amount in  
7 subsection (1) shall be multiplied by a fraction, the numerator of  
8 which is the number of months in the tax year and the denominator  
9 of which is 12.

10 (3) The department, upon application of the taxpayer and for  
11 good cause shown, may extend the date for filing the annual return.  
12 Interest at the rate under section 23(2) of 1941 PA 122, MCL  
13 205.23, shall be added to the amount of the tax unpaid for the  
14 period of the extension. The treasurer shall require with the  
15 application payment of the estimated tax liability unpaid for the  
16 tax period covered by the extension.

17 (4) If a taxpayer is granted an extension of time within which  
18 to file the federal income tax return for any tax year, the filing  
19 of a copy of the request for extension together with a tentative  
20 return and payment of an estimated tax with the department by the  
21 due date provided in subsection (1) shall automatically extend the  
22 due date for the filing of an annual or final return under this act  
23 until the last day of the eighth month following the original due  
24 date of the return. Interest at the rate under section 23(2) of  
25 1941 PA 122, MCL 205.23, shall be added to the amount of the tax  
26 unpaid for the period of the extension.

27 Sec. 507. (1) A taxpayer required to file a return under this

1 act may be required to furnish a true and correct copy of any  
2 return or portion of any return filed under the provisions of the  
3 internal revenue code.

4 (2) A taxpayer shall file an amended return with the  
5 department showing any alteration in or modification of a federal  
6 income tax return that affects its business income tax base ~~or~~  
7 ~~modified gross receipts tax base~~ under this act. The amended return  
8 shall be filed within 120 days after the final determination by the  
9 internal revenue service.

10 Sec. 511. A unitary business group shall file a combined  
11 return that includes each United States person, other than a  
12 foreign operating entity, that is included in the unitary business  
13 group. Each United States person included in a unitary business  
14 group or included in a combined return shall be treated as a single  
15 person and all transactions between those persons included in the  
16 unitary business group shall be eliminated from the business income  
17 tax base ~~, modified gross receipts tax base,~~ and the apportionment  
18 formula under this act. If a United States person included in a  
19 unitary business group or included in a combined return is subject  
20 to the tax under chapter 2A or 2B, any business income attributable  
21 to that person shall be eliminated from the business income tax  
22 base ~~, any modified gross receipts attributable to that person~~  
23 ~~shall be eliminated from the modified gross receipts tax base,~~ and  
24 any sales attributable to that person shall be eliminated from the  
25 apportionment formula under this act.

26 Sec. 601. (1) For the 2008 fiscal year, except as otherwise  
27 provided under subsection (4), if total net cash payments from the

1 tax imposed under this act plus any net cash payments from former  
2 1975 PA 228 less any net cash payments made by insurance companies  
3 under either act exceed the fiscal year 2008 base, 60% of that  
4 excess shall be refunded in the immediately succeeding fiscal year  
5 as provided in subsection (5) and the remaining 40% shall be  
6 deposited into the countercyclical budget and economic  
7 stabilization fund created in section 351 of the management and  
8 budget act, 1984 PA 431, MCL 18.1351. To calculate the fiscal year  
9 2008 base, multiply \$2,619,100,000.00 by 1.0075 and then multiply  
10 this product by the United States consumer price index for fiscal  
11 year 2008 and then divide this product by the United States  
12 consumer price index for fiscal year 2007.

13 (2) For the 2009 fiscal year, except as otherwise provided  
14 under subsection (4), if total net cash payments from the tax  
15 imposed under this act, excluding any revenue collected pursuant to  
16 chapter 2A, exceed the fiscal year 2009 base, 60% of that excess  
17 shall be refunded in the immediately succeeding fiscal year as  
18 provided in subsection (5) and the remaining 40% shall be deposited  
19 into the countercyclical budget and economic stabilization fund  
20 created in section 351 of the management and budget act, 1984 PA  
21 431, MCL 18.1351. To calculate the fiscal year 2009 base, multiply  
22 \$3,051,500,000.00 by 1.015 and then multiply this product by the  
23 United States consumer price index for fiscal year 2009 and then  
24 divide this product by the United States consumer price index for  
25 fiscal year 2007.

26 (3) For the 2010 ~~fiscal year and each fiscal year after 2010~~  
27 **AND 2011 FISCAL YEARS**, except as otherwise provided under

1 subsection (4), if total net cash payments from the tax imposed  
2 under this act, excluding any revenue collected pursuant to chapter  
3 2A, exceed the fiscal year base, 60% of that excess shall be  
4 refunded in the immediately succeeding fiscal year as provided in  
5 subsection (5) and the remaining 40% shall be deposited into the  
6 countercyclical budget and economic stabilization fund created in  
7 section 351 of the management and budget act, 1984 PA 431, MCL  
8 18.1351. To calculate the fiscal year base, multiply the fiscal  
9 year base for the immediately preceding fiscal year by 1.0075 and  
10 then multiply this product by the United States consumer price  
11 index for the fiscal year and divide this product by the United  
12 States consumer price index for the immediately preceding fiscal  
13 year.

14 (4) If the amount of the total net cash payments collected  
15 from the tax imposed under this act, excluding any revenue  
16 collected pursuant to chapter 2A, exceeds the amount described in  
17 the applicable subsection by less than \$5,000,000.00, then all of  
18 that excess shall be deposited into the countercyclical budget and  
19 economic stabilization fund created in section 351 of the  
20 management and budget act, 1984 PA 431, MCL 18.1351.

21 (5) For the 2008 fiscal year, the refund available under  
22 subsection (1) shall be applied pro rata to the taxpayers that made  
23 positive net cash payments during the fiscal year. The taxpayer's  
24 pro rata share shall be the total amount to be refunded under  
25 subsection (1) multiplied by a fraction the numerator of which is  
26 the positive net payments made by the taxpayer during the fiscal  
27 year and the denominator of which is the sum of the positive net



1 cash payments made by all taxpayers during the fiscal year. For  
2 each fiscal year after the 2008 fiscal year **THROUGH THE 2011 FISCAL**  
3 **YEAR**, the refund available under subsection (2) or (3) shall be  
4 applied pro rata to the taxpayers that claimed 1 or more credits  
5 under section 403 or 405 during the immediately preceding fiscal  
6 year. The taxpayer's pro rata share shall be the total amount to be  
7 refunded under subsection (2) or (3) multiplied by a fraction the  
8 numerator of which is the credits claimed under sections 403 and  
9 405 by the taxpayer during the immediately preceding fiscal year  
10 and the denominator of which is the sum of the credits claimed  
11 under sections 403 and 405 by all taxpayers during the immediately  
12 preceding fiscal year.

13 (6) As used in this section:

14 (a) "Fiscal year" means the state fiscal year that commences  
15 October 1 and continues through September 30.

16 (b) "Net cash payments" for the fiscal year are equal to cash  
17 annual and estimated payments made during the fiscal year less  
18 refunds paid during the fiscal year. Refunds paid under this  
19 section are not used to reduce net cash payments for purposes of  
20 calculating refunds paid out under this section.

21 (c) "United States consumer price index" means the United  
22 States consumer price index for all urban consumers as defined and  
23 reported by the United States department of labor, bureau of labor  
24 statistics.

25 Enacting section 1. Sections 203, 403, and 405 of the Michigan  
26 business tax act, 2007 PA 36, MCL 208.1203, 208.1403, and 208.1405,  
27 are repealed effective January 1, 2012.

1        Enacting section 2. This amendatory act takes effect January  
2    1, 2012 and applies to all business activity occurring after  
3    December 31, 2011.