

Act No. 282
Public Acts of 2014
Approved by the Governor
September 11, 2014
Filed with the Secretary of State
September 12, 2014
EFFECTIVE DATE: September 12, 2014

**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Senators Jansen and Hildenbrand

ENROLLED SENATE BILL No. 156

AN ACT to amend 2007 PA 36, entitled “An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations,” by amending sections 111, 305, 403, and 433 (MCL 208.1111, 208.1305, 208.1403, and 208.1433), sections 111 and 305 as amended by 2012 PA 605, section 403 as amended by 2008 PA 434, and section 433 as amended by 2007 PA 215, and by adding section 508; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 111. (1) “Gross receipts” means the entire amount received by the taxpayer as determined by using the taxpayer’s method of accounting used for federal income tax purposes, less any amount deducted as bad debt for federal income tax purposes that corresponds to items of gross receipts included in the modified gross receipts tax base for the current tax year or a past tax year 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; from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others except for the following:

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

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

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

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

(iii) Principal and interest under a mortgage loan or land 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 following:

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

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

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

(iv) The property is investment and trading assets managed as part of the person's treasury function. For purposes of this subparagraph, a person principally engaged in the trade or business 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 person organized for estate or gift planning purposes, amounts received other than those from transactions, activities, and sources in the regular course of the person'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 person'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 person's regular trade or business operations.

(B) Receipts received in the course of the person'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 person's trade or business operation.

(D) Receipts derived from the sale of an interest in a business that constitutes an integral part of the person'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 person'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 other than receipts from transactions, activities, and sources in the regular course of the person's trade or business 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.

(iv) In the case of receipts from the sale of beer, wine, or intoxicating liquor by a person holding a license to sell, distribute, or produce those products, an amount equal to federal and state excise taxes paid by any person on or for such beer, wine, or intoxicating liquor under subtitle E of the internal revenue code or 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.

(v) In the case of receipts from the sale of communication, video, internet access and related services and equipment, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, ordinance, regulation, ruling, or other legal authority and authorized to be charged on a customer's bill or invoice, 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. This subparagraph does not include the recovery of net income taxes, net worth taxes, property taxes, or the tax imposed under this act.

(vi) In the case of receipts from the sale of electricity, natural gas, or other energy source, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, ordinance, regulation, ruling, or other legal authority and authorized to be charged on a customer's bill or invoice, 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. 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 state. For purposes of this subdivision:

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

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

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

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

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

(dd) For fiscal years that begin after September 30, 2009, unless the state budget director certifies to the state treasurer by January 1 of that fiscal year that the federally certified rates for actuarial soundness required under 42 CFR 438.6 and that are specifically developed for Michigan's health maintenance organizations that hold a contract

with this state for medicaid services provide explicit adjustment for their obligations required for payment of the tax under this act, amounts received by the taxpayer during that fiscal year for medicaid premium or reimbursement of costs associated with service provided to a medicaid recipient or beneficiary.

(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.

(ff) Amounts attributed to the taxpayer pursuant to a discharge of indebtedness as described under section 61(a)(12) of the internal revenue code, including forgiveness of a nonrecourse debt.

(2) "Insurance company" means an authorized insurer as defined in sections 106 and 108 of the insurance code of 1956, 1956 PA 218, MCL 500.106 and 500.108.

(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 supplier.

(d) For a person that is a securities trader, broker, or dealer or a person included in the unitary business group of that securities trader, 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 cost of securities as defined under section 475(c)(2) of the internal revenue code and for a securities trader the cost of commodities as defined under section 475(e)(2) and for a broker or dealer the cost of commodities as defined under section 475(e)(2)(B), (C), and (D) of the internal revenue code, excluding interest expense other than interest expense related to repurchase agreements. As used in this subdivision:

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

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

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

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

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

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

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

(a) The chairperson of the board.

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

(c) Persons performing similar duties and responsibilities to persons described in subdivisions (a) and (b) that include, at a minimum, major decision making.

Sec. 305. (1) Sales of the taxpayer in this state are determined as follows:

(a) Sales of tangible personal property are in this state if the property is shipped or delivered, or, in the case of electricity and gas, the contract requires the property to be shipped or delivered, to any purchaser within this state based on the ultimate destination at the point that the property comes to rest regardless of the free on board point or other conditions of the sales. Property stored in transit for 60 days or more prior to receipt by the purchaser or the purchaser's designee, or in the case of a dock sale not picked up for 60 days or more, is deemed to have come to rest at this ultimate destination. Property stored in transit for fewer than 60 days prior to receipt by the purchaser or the purchaser's designee, or in the case of a dock sale picked up before 60 days, is not deemed to have come to rest at this ultimate destination. For purposes of this subdivision:

(i) "Dock sale" means a sale in which the purchaser uses its own or rented vehicles, or makes arrangements with a carrier, to pick up the property at the seller's location.

(ii) "Stored in transit" means storing, staging, forwarding, or consolidating activities undertaken for further shipment or transfer of the property to the purchaser or purchaser's designee.

(b) Receipts from the sale, lease, rental, or licensing of real property are in this state if that property is located in this state.

(c) Receipts from the lease or rental of tangible personal property are sales in this state to the extent that the property is utilized in this state. The extent of utilization of tangible personal property in this state is determined by multiplying the receipts by a fraction, the numerator of which is the number of days of physical location of the property in this state during the lease or rental period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all lease or rental periods in the tax year. If the physical location of the property during the lease or rental period is unknown or cannot be determined, the tangible personal property is utilized in the state in which the property was located at the time the lease or rental payer obtained possession.

(d) Receipts from the lease or rental of mobile transportation property owned by the taxpayer are in this state to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's sales factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of the fraction is the number of landings of the aircraft in this state and the denominator of the fraction is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the receipts are in this state if the property has its principal base of operations in this state.

(e) Royalties and other income received for the use of or for the privilege of using intangible property, including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, computer software, or similar items, are attributed to the state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the royalties or other income shall be excluded from both the numerator and the denominator. Intangible property is used in this state if the purchaser uses the intangible property or the rights to the intangible property in the regular course of its business operations in this state, regardless of the location of the purchaser's customers.

(2) Sales from the performance of services are in this state and attributable to this state as follows:

(a) Except as otherwise provided in this section, all receipts from the performance of services are included in the numerator of the apportionment factor if the recipient of the services receives all of the benefit of the services in this state. If the recipient of the services receives some of the benefit of the services in this state, the receipts are included in the numerator of the apportionment factor in proportion to the extent that the recipient receives benefit of the services in this state.

(b) Sales derived from securities brokerage services attributable to this state are determined by multiplying the total dollar amount of receipts from securities brokerage services by a fraction, the numerator of which is the sales of securities brokerage services to customers within this state, and the denominator of which is the sales of securities brokerage services to all customers. Receipts from securities brokerage services include commissions on transactions, the spread earned on principal transactions in which the broker buys or sells from its account, total margin interest paid on behalf of brokerage accounts owned by the broker's customers, and fees and receipts of all kinds from the underwriting of securities. If receipts from brokerage services can be associated with a particular customer, but it is impractical to associate the receipts with the address of the customer, then the address of the customer shall be presumed to be the address of the branch office that generates the transactions for the customer.

(c) Sales of services that are derived directly or indirectly from the sale of management, distribution, administration, or securities brokerage services to, or on behalf of, a regulated investment company or its beneficial owners, including receipts derived directly or indirectly from trustees, sponsors, or participants of employee benefit plans that have accounts in a regulated investment company, shall be attributable to this state to the extent that the shareholders of the regulated investment company are domiciled within this state. For purposes of this subdivision, "domicile" means the shareholder's mailing address on the records of the regulated investment company. If the regulated investment company or the person providing management services to the regulated investment company has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, then the shareholder's primary residence or principal place of business is the shareholder's domicile. A separate computation shall be made with respect to the receipts derived from each regulated investment company. The total amount of sales attributable to this state shall be equal to the total receipts received by each regulated investment company multiplied by a fraction determined as follows:

(i) The numerator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by the regulated investment company shareholders who have their domicile in this state.

(ii) The denominator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by all shareholders.

(iii) For purposes of the fraction, the year shall be the tax year of the regulated investment company that ends with or within the tax year of the taxpayer.

(3) Receipts from the origination of a loan or gains from the sale of a loan secured by residential real property is deemed a sale in this state only if 1 or more of the following apply:

(a) The real property is located in this state.

(b) The real property is located both within this state and 1 or more other states and more than 50% of the fair market value of the real property is located within this state.

(c) More than 50% of the real property is not located in any 1 state and the borrower is located in this state.

(4) Interest from loans secured by real property is in this state if the property is located within this state or if the property is located both within this state and 1 or more other states, if more than 50% of the fair market value of the real property is located within this state, or if more than 50% of the fair market value of the real property is not located within any 1 state, if the borrower is located in this state. The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(5) Interest from a loan not secured by real property is in this state if the borrower is located in this state.

(6) Gains from the sale of a loan not secured by real property, including income recorded under the coupon stripping rules of section 1286 of the internal revenue code, are in this state if the borrower is in this state.

(7) Receipts from credit card receivables, including interest, fees, and penalties from credit card receivables and receipts from fees charged to cardholders, such as annual fees, are in this state if the billing address of the cardholder is in this state.

(8) Receipts from the sale of credit card or other receivables is in this state if the billing address of the customer is in this state. Credit card issuer's reimbursements fees are in this state if the billing address of the cardholder is in this state. Receipts from merchant discounts, computed net of any cardholder chargebacks, but not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders, are in this state if the commercial domicile of the merchant is in this state.

(9) Loan servicing fees derived from loans of another secured by real property are in this state if the real property is located in this state, or the real property is located both within and outside of this state and 1 or more states if more than 50% of the fair market value of the real property is located in this state, or more than 50% of the fair market value of the real property is not located in any 1 state, and the borrower is located in this state. Loan servicing fees derived from loans of another not secured by real property are in this state if the borrower is located in this state. If the location of the security cannot be determined, then loan servicing fees for servicing either the secured or the unsecured loans of another are in this state if the lender to whom the loan servicing service is provided is located in this state.

(10) Receipts from the sale of securities and other assets from investment and trading activities, including, but not limited to, interest, dividends, and gains are in this state in either of the following circumstances:

(a) The person's customer is in this state.

(b) If the location of the person's customer cannot be determined, both of the following:

(i) Interest, dividends, and other income from investment assets and activities and from trading assets and activities, including, but not limited to, investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. Interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. The amount of receipts and other income from investment assets and activities is in this state if assets are assigned to a regular place of business of the taxpayer within this state.

(ii) The amount of receipts from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts otherwise sourced in this section, are in this state if the assets are assigned to a regular place of business of the taxpayer within this state.

(11) Receipts from transportation services rendered by a person subject to tax in another state are in this state and shall be attributable to this state as follows:

(a) Except as otherwise provided in subdivisions (b) through (e), receipts shall be proportioned based on the ratio that revenue miles of the person in this state bear to the revenue miles of the person everywhere.

(b) Receipts from maritime transportation services shall be attributable to this state as follows:

(i) 50% of those receipts that either originate or terminate in this state.

(ii) 100% of those receipts that both originate and terminate in this state.

(c) Receipts attributable to this state of a person whose business activity consists of the transportation both of property and of individuals shall be proportioned based on the total gross receipts for passenger miles and ton mile fractions, separately computed and individually weighted by the ratio of gross receipts from passenger transportation to total gross receipts from all transportation, and by the ratio of gross receipts from freight transportation to total gross receipts from all transportation, respectively.

(d) Receipts attributable to this state of a person whose business activity consists of the transportation of oil by pipeline shall be proportioned based on the ratio that the gross receipts for the barrel miles transported in this state bear to the gross receipts for the barrel miles transported by the person everywhere.

(e) Receipts attributable to this state of a person whose business activities consist of the transportation of gas by pipeline shall be proportioned based on the ratio that the gross receipts for the 1,000 cubic feet miles transported in this state bear to the gross receipts for the 1,000 cubic feet miles transported by the person everywhere.

(12) For purposes of subsection (11), if a taxpayer can show that revenue mile information is not available or cannot be obtained without unreasonable expense to the taxpayer, receipts attributable to this state shall be that portion of the revenue derived from transportation services everywhere performed that the miles of transportation services performed in this state bears to the miles of transportation services performed everywhere. If the department determines that the information required for the calculations under subsection (11) are not available or cannot be obtained without unreasonable expense to the taxpayer, the department may use other available information that in the opinion of the department will result in an equitable allocation of the taxpayer's receipts to this state.

(13) Except as provided in subsections (14) through (19), receipts from the sale of telecommunications service or mobile telecommunications service are in this state if the customer's place of primary use of the service is in this state. As used in this subsection, "place of primary use" means the customer's residential street address or primary business street address where the customer's use of the telecommunications service primarily occurs. For mobile telecommunications service, the customer's residential street address or primary business street address is the place of primary use only if it is within the licensed service area of the customer's home service provider.

(14) Receipts from the sale of telecommunications service sold on an individual call-by-call basis are in this state if either of the following applies:

(a) The call both originates and terminates in this state.

(b) The call either originates or terminates in this state and the service address is located in this state.

(15) Receipts from the sale of postpaid telecommunications service are in this state if the origination point of the telecommunication signal, as first identified by the service provider's telecommunication system or as identified by information received by the seller from its service provider if the system used to transport telecommunication signals is not the seller's, is located in this state.

(16) Receipts from the sale of prepaid telecommunications service or prepaid mobile telecommunications service are in this state if the purchaser obtains the prepaid card or similar means of conveyance at a location in this state. Receipts from recharging a prepaid telecommunications service or mobile telecommunications service is in this state if the purchaser's billing information indicates a location in this state.

(17) Receipts from the sale of private communication services are in this state as follows:

(a) 100% of the receipts from the sale of each channel termination point within this state.

(b) 100% of the receipts from the sale of the total channel mileage between each termination point within this state.

(c) 50% of the receipts from the sale of service segments for a channel between 2 customer channel termination points, 1 of which is located in this state and the other is located outside of this state, which segments are separately charged.

(d) The receipts from the sale of service for segments with a channel termination point located in this state and in 2 or more other states or equivalent jurisdictions, and which segments are not separately billed, are in this state based on a percentage determined by dividing the number of customer channel termination points in this state by the total number of customer channel termination points.

(18) Receipts from the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser's customers. If the location of the purchaser's customers is not known or cannot be determined, the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser.

(19) Receipts to access a carrier's network or from the sale of telecommunications services for resale are in this state as follows:

(a) 100% of the receipts from access fees attributable to intrastate telecommunications service that both originates and terminates in this state.

(b) 50% of the receipts from access fees attributable to interstate telecommunications service if the interstate call either originates or terminates in this state.

(c) 100% of the receipts from interstate end user access line charges, if the customer's service address is in this state. As used in this subdivision, "interstate end user access line charges" includes, but is not limited to, the surcharge approved by the federal communications commission and levied pursuant to 47 CFR 69.

(d) Gross receipts from sales of telecommunications services to other telecommunication service providers for resale shall be sourced to this state using the apportionment concepts used for non-resale receipts of telecommunications services if the information is readily available to make that determination. If the information is not readily available, then the taxpayer may use any other reasonable and consistent method.

(20) Except as otherwise provided under this subsection, for a taxpayer whose business activities include live radio or television programming as described in subsector code 7922 of industry group 792 under the standard industrial classification code as compiled by the United States department of labor or are included in industry group 483, 484, 781, or 782 under the standard industrial classification code as compiled by the United States department of labor, or any combination of the business activities included in those groups, media receipts are in this state and attributable to this state only if the commercial domicile of the customer is in this state and the customer has a direct connection or relationship with the taxpayer pursuant to a contract under which the media receipts are derived. For media receipts from the sale of advertising, if the customer of that advertising is commercially domiciled in this state and receives some of the benefit of the sale of that advertising in this state, the media receipts from the advertising to that customer are included in the numerator of the apportionment factor in proportion to the extent that the customer receives the benefit of the advertising in this state. For purposes of this subsection, if the taxpayer is a broadcaster and if the customer receives some of the benefit of the advertising in this state, the media receipts for that sale of advertising from that customer shall be proportioned based on the ratio that the broadcaster's viewing or listening audience in this state bears to its total viewing or listening audience everywhere. As used in this subsection:

(a) "Media property" means motion pictures, television programs, internet programs and websites, other audiovisual works, and any other similar property embodying words, ideas, concepts, images, or sound without regard to the means or methods of distribution or the medium in which the property is embodied.

(b) "Media receipts" means receipts from the sale, license, broadcast, transmission, distribution, exhibition, or other use of media property and receipts from the sale of media services. Media receipts do not include receipts from the sale of media property that is a consumer product that is ultimately sold at retail.

(c) "Media services" means services in which the use of the media property is integral to the performance of those services.

(21) Terms used in subsections (13) through (20) have the same meaning as those terms defined in the streamlined sales and use tax agreement administered under the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833.

(22) For purposes of this section, a borrower is considered located in this state if the borrower's billing address is in this state.

Sec. 403. (1) Notwithstanding any other provision in this act, the credits provided in this section shall be taken before any other credit under this act. Except as otherwise provided in subsection (6), for the 2008 tax year, the total combined credit allowed under this section shall not exceed 50% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281. For the 2009 tax year and each tax year after 2009, the total combined credit allowed under this section shall not exceed 52% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281.

(2) Subject to the limitation in subsection (1), for the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 0.296% of the taxpayer's compensation in this state. For the 2009 tax year and each tax year after 2009, subject to the limitation in subsection (1), a taxpayer may claim a credit against the tax imposed by this act equal to 0.370% of the taxpayer's compensation in this state. For purposes of this subsection, a taxpayer includes a person subject to the tax imposed under chapter 2A and a person subject to the tax imposed under chapter 2B. A professional employer organization shall not include payments by the professional employer organization to the officers and employees of a client of the professional employer organization whose employment operations are managed by the professional employer organization. A client may include payments by the professional employer organization to the officers and employees of the client whose employment operations are managed by the professional employer organization.

(3) Subject to the limitation in subsection (1), for the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 2.32% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c). Subject to the limitation in subsection (1), for the 2009 tax year and each tax year after 2009, a taxpayer may claim a credit against the tax imposed by this act equal to 2.9% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c):

(a) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets.

(b) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of mobile tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(c) For tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 2007 and subsequently transferred into this state and purchased or acquired for use in a business activity, calculate the federal basis used for determining gain or loss as of the date the tangible assets were physically located in this state for use in a business activity plus the cost of fabrication and installation of the tangible assets in this state.

(d) If the cost of tangible assets described in subdivision (a) was paid or accrued in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or to the extent the credit was used, and at the rate at which the credit was used under this act, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3, and plus the loss, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3 from the sale or other disposition reflected in federal taxable income.

(e) If the cost of mobile tangible assets described in subdivision (b) was paid or accrued in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or to the extent the credit was used, and at the rate at which the credit was used under this act, calculate the gross proceeds or benefit derived from the sale or other disposition of the mobile tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) For assets purchased or acquired in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or to the extent the credit was used, and at the rate at which the credit was used under this act, that were eligible for a credit under subdivision (a) or (c) and that were transferred out of this state, calculate the federal basis used for determining gain or loss as of the date of the transfer. For purposes of this subdivision, "transferred out of this state" means removal from this state of tangible assets, other than mobile tangible assets, by means other than sale or other disposition.

(4) For a tax year in which the amount of the credit calculated under subsection (3) is negative, the absolute value of that amount is added to the taxpayer's tax liability for the tax year.

(5) A taxpayer that claims a credit under this section is not prohibited from claiming a credit under section 405. However, the taxpayer shall not claim a credit under this section and section 405 based on the same costs and expenses.

(6) For a taxpayer primarily engaged in furnishing electric and gas utility service that makes capital investments in electric and gas distribution assets for which a portion of the credit provided under subsection (3) would be denied for the 2008 tax year by reason of the 50% limitation of subsection (1), the 50% limitation on the total combined credit for the 2008 tax year provided in subsection (1) shall be increased by an amount not to exceed the lesser of the amount of the denied credit or 50% of the tax increase under this act accrued for financial reporting purposes due to the elimination of the deduction under section 168(k) of the internal revenue code by 2008 PA 434. Provided, however, that the total combined credit allowed under this section for the 2008 tax year shall not exceed 80% of the tax liability imposed under this act after the imposition and levy of the surcharge under section 281.

Sec. 433. (1) A taxpayer that is a business located and conducting business activity within a renaissance zone may claim a credit against the tax imposed by this act for the tax year to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, as follows:

(a) Except as otherwise provided under subdivision (b), for a taxpayer located and conducting business activity in a renaissance zone after November 30, 2002, a credit equal to the lesser of the following:

- (i) The tax liability attributable to business activity conducted within a renaissance zone in the tax year.
- (ii) Ten percent of adjusted services performed in a designated renaissance zone.

(b) For a taxpayer located and conducting business activity in a renaissance zone before December 1, 2002, a credit equal to the greater of the following:

- (i) The amount calculated under subdivision (a)(i) or (ii), whichever is less.
- (ii) The product of the following:

(A) The credit claimed under section 39b of former 1975 PA 228 for the tax year ending in 2007.

(B) The ratio of the taxpayer's payroll in this state in the tax year divided by the taxpayer's payroll in this state in its tax year ending in 2007 under former 1975 PA 228.

(C) The ratio of the taxpayer's renaissance zone business activity factor for the tax year divided by the taxpayer's renaissance zone business activity factor for its tax year ending in 2007 under section 39b of former 1975 PA 228.

(2) Any portion of the taxpayer's tax liability that is attributable to illegal activity conducted in the renaissance zone shall not be used to calculate a credit under this section.

(3) The credit allowed under this section continues through the tax year in which the renaissance zone designation expires.

(4) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that portion of the credit that exceeds the tax liability shall not be refunded.

(5) A taxpayer that claims a credit under this section shall not employ, pay a speaker fee to, or provide any remuneration, compensation, or consideration to any person employed by the state, the state administrative board created in 1921 PA 2, MCL 17.1 to 17.3, or the renaissance zone review board created in section 5 of the renaissance zone act, 1996 PA 376, MCL 125.2685, whose employment relates or related in any way to the authorization or enforcement of the credit allowed under this section for any year in which the taxpayer claims a credit under this section and for the 3 years after the last year that a credit is claimed.

(6) To be eligible for the credit allowed under this section, an otherwise qualified taxpayer shall file an annual return under this act in a format determined by the department.

(7) Any portion of the taxpayer's tax liability that is attributable to business activity related to the operation of a casino, and business activity that is associated or affiliated with the operation of a casino, including, but not limited to, the operation of a parking lot, hotel, motel, or retail store, shall not be used to calculate a credit under this section.

(8) For purposes of this section, taxpayer includes a person subject to the tax imposed under chapter 2A and a person subject to the tax imposed under chapter 2B.

(9) As used in this section:

(a) "Adjusted services performed in a designated renaissance zone" means either of the following:

(i) Except as provided in subparagraph (ii), the sum of the taxpayer's payroll for services performed in a designated renaissance zone plus an amount equal to the amount deducted in arriving at federal taxable income for the tax year for depreciation, amortization, or immediate or accelerated write-off for tangible property exempt under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff, in the tax year or, for new property, in the immediately following tax year.

(ii) For a partnership, limited liability company, S corporation, or individual, the amount determined under subparagraph (i) plus the product of the following as related to the taxpayer if greater than zero:

(A) Business income.

(B) The ratio of the taxpayer's total sales in this state during the tax year divided by the taxpayer's total sales everywhere during the tax year.

(C) The renaissance zone business activity factor.

(b) "Casino" means a casino regulated by this state pursuant to the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(c) "New property" means property that has not been subject to, or exempt from, the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, and has not been subject to, or exempt from, ad valorem property taxes levied in another state, except that receiving an exemption as inventory property does not disqualify property.

(d) "Payroll" means total salaries and wages before deducting any personal or dependency exemptions.

(e) "Renaissance zone" means that term as defined in the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696.

(f) "Renaissance zone business activity factor" means a fraction, the numerator of which is the ratio of the average value of the taxpayer's property located in a designated renaissance zone to the average value of the taxpayer's property in this state plus the ratio of the taxpayer's payroll for services performed in a designated renaissance zone to all of the taxpayer's payroll in this state and the denominator of which is 2.

(g) "Tax liability attributable to business activity conducted within a renaissance zone" means the taxpayer's tax liability multiplied by the renaissance zone business activity factor.

Sec. 508. (1) If, as a result of the changes enacted by the amendatory act that added this section, a taxpayer has an overpayment of tax for any tax year beginning after December 31, 2009 through the tax year beginning after December 31, 2013, the taxpayer shall, in accordance with sections 27a and 30 of 1941 PA 122, MCL 205.27a and 205.30, file a claim for a refund, on or after January 1, 2015 but no later than December 31, 2015, using a form, process, or format as prescribed by the department. A claim filed pursuant to this section is limited to the determination of any tax liability and any overpayment resulting from the changes enacted by the amendatory act that added this section. Interest shall be calculated in accordance with section 23 of 1941 PA 122, MCL 205.23. Any refund paid under this section shall be paid in equal annual payments over 6 years beginning in 2016.

(2) Notwithstanding section 21(6) and (7) of 1941 PA 122, MCL 205.21, and the statute of limitations period prescribed under section 27a(2) of 1941 PA 122, MCL 205.27a, the department may assess a taxpayer that claimed a refund pursuant to this section for any amount determined after audit or investigation to have exceeded the proper and correct amount of overpayment resulting from the changes enacted by the amendatory act that added this section. The assessment issued under this subsection shall not be issued more than 4 years after the date the taxpayer filed its claim under this section and shall be limited to the changes enacted by the amendatory act that added this section.

(3) There is appropriated to the department for the 2014-2015 state fiscal year the sum of \$1,000,000.00 to begin implementing the requirements of the amendatory act that added this section. Any portion of this amount under this section that is not expended in the 2014-2015 state fiscal year shall not lapse to the general fund but shall be carried forward in a work project account that is in compliance with section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a, for the following state fiscal year.

Enacting section 1. 1969 PA 343, MCL 205.581 to 205.589, is repealed retroactively and effective beginning January 1, 2008. It is the intent of the legislature that the repeal of 1969 PA 343, MCL 205.581 to 205.589, is to express the original intent of the legislature regarding the application of section 301 of the Michigan business tax act, 2007 PA 36, MCL 208.1301, and the intended effect of that section to eliminate the election provision included within section 1 of 1969 PA 343, MCL 205.581, and that the 2011 amendatory act that amended section 1 of 1969 PA 343, MCL 205.581, was to further express the original intent of the legislature regarding the application of section 301 of the Michigan business tax act, 2007 PA 36, MCL 208.1301, and to clarify that the election provision included within section 1 of 1969 PA 343, MCL 205.581, is not available under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713.

Enacting section 2. This amendatory act is retroactive and is effective for tax years beginning on and after January 1, 2010.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

.....
Governor