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BILL ANALYSIS

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Senate Bill 1038 (as introduced 1-22-08)  
Sponsor: Senator Nancy Cassis  
Committee: Finance

Date Completed: 1-24-08

### **CONTENT**

**The bill would amend the Michigan Business Tax (MBT) Act to exclude from the definition of "gross receipts" certain proceeds, interest income, royalties, dividends, taxes, fees, and surcharges, and to include hedging transactions.**

Section 203 of the Act imposes a modified gross receipts tax on every taxpayer with nexus as determined under the Act. This tax is imposed on the modified gross receipts tax base, after allocation or apportionment to the State at a rate of 0.80%.

The Act defines "gross receipts" as the entire amount received by the taxpayer, 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 certain proceeds, interest earned, or other receipts described in the Act. Under the bill, "gross receipts" would not include those amounts that were only deemed received under the Internal Revenue Code. The bill also would refer to the entire amount received by the taxpayer from "business activity".

In addition, the bill would exclude the following from gross receipts:

- Proceeds from treasury functions that generate investment income and that are embedded within an operating property.
- Interest income and dividends derived from obligations or securities of the United States government and this State in the same amount that was excluded from Federal taxable income.
- Dividends and royalties received from a foreign operating entity or a person other than a U.S. person, including the amounts determined under Sections 78 and 951 to 964 of the Internal Revenue Code (IRC).
- Any tax, fee, or surcharge required by law.
- For a partner, amounts received that are attributable to another entity whose business activities are taxable under Section 203 of the MBT Act or would be subject to the tax under the section if the business activities were in this State.

(Under Section 78 of the IRC, if a domestic corporation chooses to have the benefits of a foreign tax credit for any taxable year, an amount equal to the taxes deemed to be paid by such a corporation is treated for the taxable year as a dividend received by the domestic corporation from the foreign corporation. Sections 951 through 964 pertain to controlled foreign corporations, income of foreign based companies, rules for determining stock ownership, and amounts included in gross income of U.S. shareholders.)

Under the Act, gross receipts do not include proceeds from a sale, transaction, exchange, involuntary conversion, or other disposition of tangible, intangible, or real property that is a

capital asset as defined in Section 1221(a) of the IRC or land that qualifies as property used in the trade or business as defined in Section 1231(b) of the IRC, less any gain from the disposition to the extent that gain is included in Federal taxable income. Under the bill, gross receipts would include any hedging transaction as described in Section 1221(a)(7) of the IRC. The bill would refer to land that was purchased before January 1, 2008, and qualifies as property used in the trade or business as defined in Section 1231(b) of the IRC. The bill also would delete "less any gain from the disposition to the extent that gain is included in federal taxable income".

(Under Section 1221(a) of the IRC, "capital asset" means property held by the taxpayer, whether or not connected with his or her trade or business, not including certain stocks, property, copyrights or artistic compositions, accounts or notes receivable, or publications of the U.S. government, as described in the Code.

Under Section 1231(b), "property used in the trade or business" means property used in the trade or business, of a character that is subject to the allowance for depreciation provided under the Code, held for more than one year, and real property used in the trade or business, held for more than one year and subject to certain provisions.

Section 1221(a)(7) refers to any hedging transaction that is clearly identified as such before the close of the day on which it was acquired, originated, or entered into, or another time prescribed by U.S. Treasury Secretary regulations.)

Under the Act, for an individual, estate, partnership organized exclusively for estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes, gross receipts do not include amounts received other than those from transactions, activities, and sources in the regular course of the taxpayer's trade or business, including the following:

- Receipts from tangible and intangible property if the acquisition, rental, management, or disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.
- 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.
- Receipts derived from isolated sales, leases, assignment, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving property if the property is or was used in the taxpayer's trade or business operation.
- Receipts derived from the sale of a business.
- Receipts excluded from gross receipts under the Act for an individual, estate, partnership organized exclusively for estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes.

The bill would delete receipts derived from the sale of a business.

The bill also would delete references to a partnership organized exclusively for estate or gift planning purposes, and would refer instead to a person organized for estate or gift planning purposes, or person organized to conduct investment activity that does not conduct a trade or business or conduct investment activity for a trade or business.

The bill specifies that it would be retroactive and effective for taxes levied on and after January 1, 2008.

MCL 208.1111

Legislative Analyst: Craig Laurie

## **FISCAL IMPACT**

The bill would reduce General Fund revenue by an unknown and potentially significant amount. The changes in the bill would provide additional reductions to gross receipts, in many cases excluding receipts that are often excluded under definitions of business income. The magnitude of most of the changes is unknown. Among the changes, the bill would exclude any taxes, fee, or surcharge legally required to be received by a taxpayer. As a result, sales taxes collected by retail businesses would no longer be included in gross receipts. The impact of not including Michigan sales taxes would reduce General Fund revenue by approximately \$50 million, according to the Department of Treasury. However, the bill would exclude from gross receipts all sales tax collections, not just those collected under Michigan statute.

The bill would have no fiscal impact on local government.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.