

SENATE BILL No. 1005

December 13, 2007, Introduced by Senators JANSEN, GILBERT, BISHOP and PAPPAGEORGE and referred to the Committee on Finance.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending sections 111, 113, and 410 (MCL 208.1111, 208.1113, and 208.1410), sections 111 and 113 as amended by 2007 PA 145.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 111. (1) "Gross receipts" means the entire amount
2 received by the taxpayer from any activity whether in intrastate,
3 interstate, or foreign commerce carried on for direct or indirect
4 gain, benefit, or advantage to the taxpayer or to others except for
5 the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (g) Proceeds from any of the following:

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

18 (ii) The original issue of debt instruments.

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

21 (h) Refunds from returned merchandise.

22 (i) Cash and in-kind discounts.

23 (j) Trade discounts.

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

25 (l) Security deposits.

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

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

1 (o) Proceeds from a sale, transaction, exchange, involuntary
2 conversion, or other disposition of tangible, intangible, or real
3 property that is a capital asset as defined in section 1221(a) of
4 the internal revenue code or land that qualifies as property used
5 in the trade or business as defined in section 1231(b) of the
6 internal revenue code, less any gain from the disposition to the
7 extent that gain is included in federal taxable income.

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

11 (q) For a sales finance company, as defined in section 2 of
12 the motor vehicles sales finance act, 1950 (Ex Sess) PA 27, MCL
13 492.102, and directly or indirectly owned in whole or in part by a
14 motor vehicle manufacturer as of January 1, 2008, amounts realized
15 from the repayment, maturity, sale, or redemption of the principal
16 of a loan, bond, or mutual fund, certificate of deposit, or similar
17 marketable instrument.

18 (r) For a sales finance company, as defined in section 2 of
19 the motor vehicles sales finance act, 1950 (Ex Sess) PA 27, MCL
20 492.102, and directly or indirectly owned in whole or in part by a
21 motor vehicle manufacturer as of January 1, 2008, the principal
22 amount received under a repurchase agreement or other transaction
23 properly characterized as a loan.

24 (s) For a mortgage company, proceeds representing the
25 principal balance of loans transferred or sold in the tax year. For
26 purposes of this subdivision, "mortgage company" means a person
27 that is licensed under the mortgage brokers, lenders, and servicers

1 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the
2 secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and
3 has greater than 90% of its revenues, in the ordinary course of
4 business, from the origination, sale, or servicing of residential
5 mortgage loans.

6 (t) For a professional employer organization, any amount
7 charged by a professional employer organization that represents the
8 actual cost of wages and salaries, benefits, worker's compensation,
9 payroll taxes, withholding, or other assessments paid to or on
10 behalf of a covered employee by the professional employer
11 organization under a professional employer arrangement.

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

16 (v) For an individual, estate, partnership organized
17 exclusively for estate or gift planning purposes, or trust
18 organized exclusively for estate or gift planning purposes, amounts
19 received other than those from transactions, activities, and
20 sources in the regular course of the taxpayer's trade or business,
21 including the following:

22 (i) Receipts from tangible and intangible property if the
23 acquisition, rental, management, or disposition of the property
24 constitutes integral parts of the taxpayer's regular trade or
25 business operations.

26 (ii) Receipts received in the course of the taxpayer's trade or
27 business from stock and securities of any foreign or domestic

1 corporation and dividend and interest income.

2 (iii) Receipts derived from isolated sales, leases, assignment,
3 licenses, divisions, or other infrequently occurring dispositions,
4 transfers, or transactions involving property if the property is or
5 was used in the taxpayer's trade or business operation.

6 (iv) Receipts derived from the sale of a business.

7 (v) Receipts excluded from gross receipts under this
8 subsection for an individual, estate, partnership organized
9 exclusively for estate or gift planning purposes, or trust
10 organized exclusively for estate or gift planning purposes include,
11 but are not limited to, the following:

12 (A) Personal investment activity, including interest,
13 dividends, and gains from a personal investment portfolio or
14 retirement account.

15 (B) Disposition of tangible, intangible, or real property held
16 for personal use and enjoyment, such as a personal residence or
17 personal assets.

18 **(W) ANY TAX, FEE, OR SURCHARGE REQUIRED BY LAW.**

19 (2) "Insurance company" means an authorized insurer as defined
20 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
21 500.106.

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

25 (4) "Inventory" means, except as provided in subdivision (d),
26 all of the following:

27 (a) The stock of goods held for resale in the regular course

1 of trade of a retail or wholesale business, including electricity
2 or natural gas purchased for resale.

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

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

16 (d) Inventory does not include either of the following:

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

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

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

23 (a) The chairperson of the board.

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

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

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

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

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

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

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

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

23 (c) Reporting, collecting, and depositing state and federal
24 employment taxes for the employees.

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

26 (5) Professional employer organization is not a staffing
27 company as that term is defined in subsection (6).

1 (6) "Purchases from other firms" means all of the following:

2 (a) Inventory acquired during the tax year, including freight,
3 shipping, delivery, or engineering charges included in the original
4 contract price for that inventory.

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

10 (c) To the extent not included in inventory or depreciable
11 property, materials and supplies, including repair parts and fuel.

12 (d) For a staffing company, compensation of personnel supplied
13 to customers of staffing companies. As used in this subdivision:

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

16 (ii) "Staffing company" means a taxpayer whose business
17 activities are included in industry group 736 under the standard
18 industrial classification code as compiled by the United States
19 department of labor.

20 (e) For a person included in major groups 15, 16, and 17 under
21 the standard industrial classification code as compiled by the
22 United States department of labor that does not qualify for a
23 credit under section 417, payments to subcontractors for a
24 construction project under a contract specific to that project.

25 ~~(f) For the 2009 tax year, 50% of film rental or royalty~~
26 ~~payments paid by a theater owner to a film distributor, a film~~
27 ~~producer, or a film distributor and producer. For the 2010-2008 tax~~

1 year and each tax year after ~~2010~~2008, all film rental or royalty
2 payments paid by a theater owner to a film distributor, a film
3 producer, or a film distributor and producer.

4 (7) "Revenue mile" means the transportation for a
5 consideration of 1 net ton in weight or 1 passenger the distance of
6 1 mile.

7 Sec. 410. (1) For tax years that begin on or after January 1,
8 2008 and end before January 1, 2013, an eligible taxpayer may claim
9 a credit against the tax imposed by this act equal to the
10 following:

11 (a) For the 2008 through 2010 tax years, 65% of the eligible
12 taxpayer's total tax liability imposed under this act not to exceed
13 \$1,700,000.00.

14 (b) For the 2011 tax year, 45% of the eligible taxpayer's
15 total tax liability imposed under this act not to exceed
16 \$1,180,000.00.

17 (c) For the 2012 tax year, 25% of the eligible taxpayer's
18 total tax liability imposed under this act not to exceed
19 \$650,000.00.

20 (2) As used in this section, "eligible taxpayer" means a
21 taxpayer that satisfies ~~each~~EITHER of the following:

22 (a) Is, collectively or individually, including through
23 affiliated companies, an owner, operator, manager, licensee,
24 lessee, or tenant of more than 1 facility or stadium **IN THIS STATE**,
25 including grounds and ancillary facilities, that has a capacity of
26 at least 14,000 patrons **PER FACILITY** and is primarily used for
27 professional sporting events or other entertainment.

1 ~~_____ (b) The owner, operator, manager, licensee, lessee, or tenant~~
2 ~~as described in subdivision (a) AND~~ has made a capital investment
3 of not less than \$250,000,000.00, collectively or individually,
4 including through affiliated companies, into the construction cost
5 of a facility or stadium for which the taxpayer qualifies for this
6 credit.

7 **(B) ~~(e) The~~ IS COLLECTIVELY OR INDIVIDUALLY, INCLUDING THROUGH**
8 **AFFILIATED COMPANIES, AN** owner, operator, manager, licensee,
9 lessee, or tenant ~~as described in subdivision (a) OF MORE THAN 1~~
10 **FACILITY OR STADIUM IN THIS STATE, INCLUDING GROUNDS AND ANCILLARY**
11 **FACILITIES, THAT HAS A CAPACITY OF AT LEAST 14,000 PATRONS PER**
12 **FACILITY AND IS PRIMARILY USED FOR PROFESSIONAL SPORTING EVENTS OR**
13 **OTHER ENTERTAINMENT, AND** has not received proceeds from a state
14 appropriation ~~, OR~~ a public bond issue from a local unit of
15 government or public authority, ~~or a state or local tax or fee to~~
16 assist in the construction or debt retirement of the facility,
17 ~~other than~~ **EXCLUDING A TAX ABATEMENT, OTHER WAIVER OF** a state or
18 local tax or fee, **OR A STATE OR LOCAL TAX OR FEE** from a public
19 entity for road or infrastructure assistance.

20 Enacting section 1. This amendatory act takes effect January
21 1, 2008.