

**SUBSTITUTE FOR
SENATE BILL NO. 369**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 105. (1) "Business activity" means a transfer of legal or
2 equitable title to or rental of property, whether real, personal,
3 or mixed, tangible or intangible, or the performance of services,
4 or a combination thereof, made or engaged in, or caused to be made
5 or engaged in, whether in intrastate, interstate, or foreign
6 commerce, with the object of gain, benefit, or advantage, whether
7 direct or indirect, to the taxpayer or to others, but does not
8 include the services rendered by an employee to his or her employer
9 or services as a director of a corporation. Although an activity of

1 a taxpayer may be incidental to another or to other of his or her
2 business activities, each activity shall be considered to be
3 business engaged in within the meaning of this act.

4 (2) "Business income" means that part of federal taxable
5 income derived from business activity. For a partnership or S
6 corporation, business income includes payments and items of income
7 and expense that are attributable to business activity of the
8 partnership or S corporation and separately reported to the
9 partners or shareholders. For an organization that is a mutual or
10 cooperative electric company exempt under section 501(c)(12) of the
11 internal revenue code, business income equals the organization's
12 excess or deficiency of revenues over expenses as reported to the
13 federal government by those organizations exempt from the federal
14 income tax under the internal revenue code, less capital credits
15 paid to members of that organization, less income attributed to
16 equity in another organization's net income, and less income
17 resulting from a charge approved by a state or federal regulatory
18 agency that is restricted for a specified purpose and refundable if
19 it is not used for the specified purpose. For a tax-exempt person,
20 business income means only that part of federal taxable income
21 derived from unrelated business activity. **FOR A PERSON THAT IS**
22 **ORGANIZED EXCLUSIVELY TO CONDUCT INVESTMENT ACTIVITY AND THAT DOES**
23 **NOT CONDUCT INVESTMENT ACTIVITY FOR ANY PERSON OTHER THAN AN**
24 **INDIVIDUAL OR A PERSON RELATED TO THAT INDIVIDUAL AND FOR A COMMON**
25 **TRUST FUND ESTABLISHED UNDER THE COLLECTIVE INVESTMENTS FUNDS ACT,**
26 **1941 PA 174, MCL 555.101 TO 555.113, BUSINESS INCOME EXCLUDES**
27 **INCOME DERIVED FROM INVESTMENT ACTIVITY UNLESS THE ACTIVITY IS IN**

1 THE REGULAR COURSE OF THE PERSON'S TRADE OR BUSINESS. FOR PURPOSES
2 OF THIS SUBSECTION, A PERSON IS RELATED TO AN INDIVIDUAL IF THAT
3 PERSON IS A SPOUSE, BROTHER OR SISTER, WHETHER OF THE WHOLE OR HALF
4 BLOOD OR BY ADOPTION, ANCESTOR, LINEAL DESCENDANT OF THAT
5 INDIVIDUAL OR RELATED PERSON, OR A TRUST BENEFITING THAT INDIVIDUAL
6 OR 1 MORE PERSONS RELATED TO THAT INDIVIDUAL. For an individual,
7 estate, ~~partnership organized exclusively for estate or gift~~
8 ~~planning purposes, or trust~~ OR PERSON organized exclusively for
9 estate or gift planning purposes, business income is that part of
10 federal taxable income derived from transactions, activities, and
11 sources in the regular course of the ~~taxpayer's~~ PERSON'S trade or
12 business, including the following:

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

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

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

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

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

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

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

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

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

27 (a) Proceeds from sales by a principal that the taxpayer

1 collects in an agency capacity solely on behalf of the principal
2 and delivers to the principal.

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

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

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

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

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

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

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

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

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

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

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

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

23 (h) Proceeds from any of the following:

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

27 (ii) The original issue of debt instruments.

- 1 (i) Refunds from returned merchandise.
- 2 (j) Cash and in-kind discounts.
- 3 (k) Trade discounts.
- 4 (l) Federal, state, or local tax refunds.
- 5 (m) Security deposits.
- 6 (n) Payment of the principal portion of loans.
- 7 (o) Value of property received in a like-kind exchange.
- 8 (p) Proceeds from a sale, transaction, exchange, involuntary
9 conversion, maturity, redemption, repurchase, recapitalization, or
10 other disposition or reorganization of tangible, intangible, or
11 real property, less any gain from the disposition or reorganization
12 to the extent that the gain is included in the taxpayer's federal
13 taxable income, if the property satisfies 1 or more of the
14 following:
- 15 (i) The property is a capital asset as defined in section
16 1221(a) of the internal revenue code.
- 17 (ii) The property is land that qualifies as property used in
18 the trade or business as defined in section 1231(b) of the internal
19 revenue code.
- 20 (iii) The property is used in a hedging transaction entered into
21 by the taxpayer in the normal course of the taxpayer's trade or
22 business primarily to manage the risk of exposure to foreign
23 currency fluctuations that affect assets, liabilities, profits,
24 losses, equity, or investments in foreign operations; interest rate
25 fluctuations; or commodity price fluctuations. For purposes of this
26 subparagraph, the actual transfer of title of real or tangible
27 personal property to another person is not a hedging transaction.

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

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

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

23 (r) For a sales finance company, as defined in section 2 of
24 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
25 492.102, and directly or indirectly owned in whole or in part by a
26 motor vehicle manufacturer as of January 1, 2008, and for a person
27 that is a broker or dealer as defined under section 78c(a)(4) or

1 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
2 included in the unitary business group of that broker or dealer
3 that buys and sells for its own account, contracts that are subject
4 to the commodity exchange act, 7 USC 1 to 27f, amounts realized
5 from the repayment, maturity, sale, or redemption of the principal
6 of a loan, bond, or mutual fund, certificate of deposit, or similar
7 marketable instrument provided such instruments are not held as
8 inventory.

9 (s) For a sales finance company, as defined in section 2 of
10 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
11 492.102, and directly or indirectly owned in whole or in part by a
12 motor vehicle manufacturer as of January 1, 2008, and for a person
13 that is a broker or dealer as defined under section 78c(a)(4) or
14 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
15 included in the unitary business group of that broker or dealer
16 that buys and sells for its own account, contracts that are subject
17 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
18 received under a repurchase agreement or other transaction properly
19 characterized as a loan.

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

1 mortgage loans.

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

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

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

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

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

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

27 (C) Receipts derived from isolated sales, leases, assignments,

1 licenses, divisions, or other infrequently occurring dispositions,
2 transfers, or transactions involving tangible, intangible, or real
3 property if the property is or was used in the ~~taxpayer's~~ **PERSON'S**
4 trade or business operation.

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

8 (E) Receipts derived from the lease or rental of real
9 property.

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

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

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

19 (x) Receipts derived from investment activity **OTHER THAN**
20 **RECEIPTS FROM TRANSACTIONS, ACTIVITIES, AND SOURCES IN THE REGULAR**
21 **COURSE OF THE PERSON'S TRADE OR BUSINESS** by a person that is
22 organized exclusively to conduct investment activity and that does
23 not conduct investment activity for any person other than an
24 individual or a person related to that individual or by a common
25 trust fund established under the collective investment funds act,
26 1941 PA 174, MCL 555.101 to 555.113. For purposes of this
27 subdivision, a person is related to an individual if that person is

1 a spouse, brother or sister, whether of the whole or half blood or
2 by adoption, ancestor, lineal descendent of that individual or
3 related person, or a trust benefiting that individual or 1 or more
4 persons related to that individual.

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

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

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

20 (i) Sales or use taxes collected from or reimbursed by a
21 consumer or other taxes the taxpayer collected directly from or was
22 reimbursed by a purchaser and remitted to a local, state, or
23 federal tax authority, phased in over a 5-year period starting with
24 50% of that amount in the 2008 tax year, 60% in the 2009 tax year,
25 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the
26 2012 tax year and each tax year thereafter.

27 (ii) In the case of receipts from the sale of cigarettes or

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

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

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

25 (v) In the case of receipts from the sale of communication,
26 video, internet access and related services and equipment, any
27 government imposed tax, fee, or other imposition in the nature of a

1 tax or fee required by law, ordinance, regulation, ruling, or other
2 legal authority and authorized to be charged on a customer's bill
3 or invoice, phased in over a 5-year period starting with 50% of
4 that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in
5 the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012
6 tax year and each tax year thereafter. This subparagraph does not
7 include the recovery of net income taxes, net worth taxes, property
8 taxes, or the tax imposed under this act.

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

20 (vii) Any deposit required under any of the following, phased
21 in over a 5-year period starting with 50% of that amount in the
22 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year,
23 75% in the 2011 tax year, and 100% in the 2012 tax year and each
24 tax year thereafter:

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

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

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

1 (D) Any substantially similar beverage container deposit law
2 of another state.

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

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

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

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

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

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

27 (cc) For a regulated investment company as that term is

1 defined under section 851 of the internal revenue code, receipts
2 derived from investment activity by that regulated investment
3 company.

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

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

20 (2) "Insurance company" means an authorized insurer as defined
21 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
22 500.106.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (a) The chairperson of the board.

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

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

20 Sec. 405. For the 2008 tax year, a taxpayer may claim a credit
21 against the tax imposed by this act equal to 1.52% of the
22 taxpayer's research and development expenses in this state in the
23 tax year. For the 2009 tax year and each tax year after 2009, a
24 taxpayer may claim a credit against the tax imposed by this act
25 equal to 1.90% of the taxpayer's research and development expenses
26 in this state in the tax year. The credit under this section
27 combined with the total combined credit allowed under section 403

1 shall not exceed 65% of the tax liability imposed under this act
2 before the imposition and levy of the surcharge under section 281.
3 As used in this section, "research and development expenses" means
4 **QUALIFIED RESEARCH EXPENSES AS** that term ~~as IS~~ defined in section
5 41(b) of the internal revenue code.

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

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

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

27 (4) If a taxpayer is granted an extension of time within which

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

10 Enacting section 1. This amendatory act is curative and
11 intended to clarify the original intent of 2007 PA 36. This
12 amendatory act is retroactive and effective for taxes levied on and
13 after January 1, 2008.