

**SUBSTITUTE FOR
SENATE BILL NO. 1037**

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 111, 113, 201, 305, 403, 433, and 511 (MCL
208.1111, 208.1113, 208.1201, 208.1305, 208.1403, 208.1433, and
208.1511), section 111 as amended by 2011 PA 305, section 113 as
amended by 2011 PA 77, section 201 as amended by 2009 PA 135,
section 305 as amended by 2007 PA 205, section 403 as amended by
2008 PA 434, section 433 as amended by 2007 PA 215, and section 511
as amended by 2011 PA 292.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 111. (1) "Gross receipts" means the entire amount
2 received by the taxpayer as determined by using the taxpayer's
3 method of accounting used for federal income tax purposes, less any

1 amount deducted as bad debt for federal income tax purposes that
2 corresponds to items of gross receipts included in the modified
3 gross receipts tax base for the current tax year or a past tax year
4 phased in over a 5-year period starting with 50% of that amount in
5 the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax
6 year, 75% in the 2011 tax year, and 100% in the 2012 tax year and
7 each tax year thereafter, from any activity whether in intrastate,
8 interstate, or foreign commerce carried on for direct or indirect
9 gain, benefit, or advantage to the taxpayer or to others except for
10 the following:

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

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

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

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

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

27 (iv) A capital asset of a type that is, or under the internal

1 revenue code will become, eligible for depreciation, amortization,
2 or accelerated cost recovery by the principal for federal income
3 tax purposes, or for real property owned or leased by the
4 principal.

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

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

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

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

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

23 (f) Notwithstanding any other provision of this section,
24 amounts received by a taxpayer that manages real property owned by
25 a third party that are deposited into a separate account kept in
26 the name of that third party and that are not reimbursements to the
27 taxpayer and are not indirect payments for management services that

1 the taxpayer provides to that third party.

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

7 (h) Proceeds from any of the following:

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

11 (ii) The original issue of debt instruments.

12 (i) Refunds from returned merchandise.

13 (j) Cash and in-kind discounts.

14 (k) Trade discounts.

15 (l) Federal, state, or local tax refunds.

16 (m) Security deposits.

17 (n) Payment of the principal portion of loans.

18 (o) Value of property received in a like-kind exchange.

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

26 (i) The property is a capital asset as defined in section
27 1221(a) of the internal revenue code.

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

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

21 (iv) The property is investment and trading assets managed as
22 part of the person's treasury function. For purposes of this
23 subparagraph, a person principally engaged in the trade or business
24 of purchasing and selling investment and trading assets is not
25 performing a treasury function. Only the overall net gain from the
26 treasury function incurred during the tax year is included in gross
27 receipts. As used in this subparagraph, "treasury function" means

1 the pooling and management of investment and trading assets for the
2 purpose of satisfying the cash flow or liquidity needs of the
3 taxpayer's trade or business.

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

7 (r) For a sales finance company, as defined in section 2 of
8 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
9 492.102, and directly or indirectly owned in whole or in part by a
10 motor vehicle manufacturer as of January 1, 2008, and for a person
11 that is a broker or dealer as defined under section 78c(a)(4) or
12 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
13 included in the unitary business group of that broker or dealer
14 that buys and sells for its own account, contracts that are subject
15 to the commodity exchange act, 7 USC 1 to 27f, amounts realized
16 from the repayment, maturity, sale, or redemption of the principal
17 of a loan, bond, or mutual fund, certificate of deposit, or similar
18 marketable instrument provided such instruments are not held as
19 inventory.

20 (s) For a sales finance company, as defined in section 2 of
21 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
22 492.102, and directly or indirectly owned in whole or in part by a
23 motor vehicle manufacturer as of January 1, 2008, and for a person
24 that is a broker or dealer as defined under section 78c(a)(4) or
25 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
26 included in the unitary business group of that broker or dealer
27 that buys and sells for its own account, contracts that are subject

1 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
2 received under a repurchase agreement or other transaction properly
3 characterized as a loan.

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

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

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

23 (w) For an individual, estate, or person organized for estate
24 or gift planning purposes, amounts received other than those from
25 transactions, activities, and sources in the regular course of the
26 person's trade or business. For purposes of this subdivision, all
27 of the following apply:

1 (i) Amounts received from transactions, activities, and sources
2 in the regular course of the person's business include, but are not
3 limited to, the following:

4 (A) Receipts from tangible and intangible property if the
5 acquisition, rental, lease, management, or disposition of the
6 property constitutes integral parts of the person's regular trade
7 or business operations.

8 (B) Receipts received in the course of the person's trade or
9 business from stock and securities of any foreign or domestic
10 corporation and dividend and interest income.

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

16 (D) Receipts derived from the sale of an interest in a
17 business that constitutes an integral part of the person's regular
18 trade or business.

19 (E) Receipts derived from the lease or rental of real
20 property.

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

23 (A) Receipts derived from investment activity, including
24 interest, dividends, royalties, and gains from an investment
25 portfolio or retirement account, if the investment activity is not
26 part of the person's trade or business.

27 (B) Receipts derived from the disposition of tangible,

1 intangible, or real property held for personal use and enjoyment,
2 such as a personal residence or personal assets.

3 (x) Receipts derived from investment activity other than
4 receipts from transactions, activities, and sources in the regular
5 course of the person's trade or business by a person that is
6 organized exclusively to conduct investment activity and that does
7 not conduct investment activity for any person other than an
8 individual or a person related to that individual or by a common
9 trust fund established under the collective investment funds act,
10 1941 PA 174, MCL 555.101 to 555.113. For purposes of this
11 subdivision, a person is related to an individual if that person is
12 a spouse, brother or sister, whether of the whole or half blood or
13 by adoption, ancestor, lineal descendent of that individual or
14 related person, or a trust benefiting that individual or 1 or more
15 persons related to that individual.

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

21 (z) Dividends and royalties received or deemed received from a
22 foreign operating entity or a person other than a United States
23 person, including, but not limited to, the amounts determined under
24 section 78 of the internal revenue code and sections 951 to 964 of
25 the internal revenue code, phased in over a 5-year period starting
26 with 50% of that amount in the 2008 tax year, 60% in the 2009 tax
27 year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100%

1 in the 2012 tax year and each tax year thereafter.

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

4 (i) Sales or use taxes collected from or reimbursed by a
5 consumer or other taxes the taxpayer collected directly from or was
6 reimbursed by a purchaser and remitted to a local, state, or
7 federal tax authority, phased in over a 5-year period starting with
8 50% of that amount in the 2008 tax year, 60% in the 2009 tax year,
9 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the
10 2012 tax year and each tax year thereafter.

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

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

27 (iv) In the case of receipts from the sale of beer, wine, or

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

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

20 (vi) In the case of receipts from the sale of electricity,
21 natural gas, or other energy source, any government imposed tax,
22 fee, or other imposition in the nature of a tax or fee required by
23 law, ordinance, regulation, ruling, or other legal authority and
24 authorized to be charged on a customer's bill or invoice, phased in
25 over a 5-year period starting with 50% of that amount in the 2008
26 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75%
27 in the 2011 tax year, and 100% in the 2012 tax year and each tax

1 year thereafter. This subparagraph does not include the recovery of
2 net income taxes, net worth taxes, property taxes, or the tax
3 imposed under this act.

4 (vii) Any deposit required under any of the following, phased
5 in over a 5-year period starting with 50% of that amount in the
6 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year,
7 75% in the 2011 tax year, and 100% in the 2012 tax year and each
8 tax year thereafter:

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

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

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

12 (D) Any substantially similar beverage container deposit law
13 of another state.

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

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

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

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

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

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

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

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

26 (ee) For a taxpayer that provides health care management
27 consulting services, amounts received by the taxpayer as fees from

1 its clients that are expended by the taxpayer to reimburse those
2 clients for labor and nonlabor services that are paid by the client
3 and reimbursed to the client pursuant to a services agreement.

4 **(FF) AMOUNTS ATTRIBUTED TO THE TAXPAYER PURSUANT TO A**
5 **DISCHARGE OF INDEBTEDNESS AS DESCRIBED UNDER SECTION 61(A)(12) OF**
6 **THE INTERNAL REVENUE CODE, INCLUDING FORGIVENESS OF A NONRECOURSE**
7 **DEBT.**

8 (2) "Insurance company" means an authorized insurer as defined
9 in section ~~106-108~~ of the insurance code of 1956, 1956 PA 218, MCL
10 ~~500.106-500.108~~.

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

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

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

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

21 (c) For a person that is a new motor vehicle dealer licensed
22 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923,
23 floor plan interest expenses for new motor vehicles. For purposes
24 of this subdivision, "floor plan interest" means interest paid that
25 finances any part of the person's purchase of new motor vehicle
26 inventory from a manufacturer, distributor, or supplier. However,
27 amounts attributable to any invoiced items used to provide more

1 favorable floor plan assistance to a person subject to the tax
2 imposed under this act than to a person not subject to this tax is
3 considered interest paid by a manufacturer, distributor, or
4 supplier.

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

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

18 (ii) "Dealer" means that term as defined under section
19 78c(a)(5) of the securities exchange act of 1934, 15 USC 78c.

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

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

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

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

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

3 (a) The chairperson of the board.

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

6 (c) Persons performing similar duties **AND RESPONSIBILITIES** to
7 persons described in subdivisions (a) and (b) **SUCH AS MAJOR**
8 **DECISION MAKING.**

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

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

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

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

26 (a) Maintaining a right of direction and control of employees'
27 work, although this responsibility may be shared with the other

1 entity.

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

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

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

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

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

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

13 (b) Assets, including the costs of fabrication and
14 installation, acquired **OR SELF-CONSTRUCTED** during the tax year of a
15 type that are, or under the internal revenue code will become,
16 eligible for depreciation, amortization, or accelerated capital
17 cost recovery for federal income tax purposes.

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

20 **FOR PURPOSES OF THIS SUBDIVISION, MATERIALS AND SUPPLIES MEAN**
21 **TANGIBLE PERSONAL PROPERTY EXPENSED BY THE TAXPAYER AND NOT**
22 **CAPITALIZED FOR FEDERAL INCOME TAX PURPOSES.**

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

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

27 (ii) "Staffing company" means a taxpayer whose business

1 activities are included in industry group 736 under the standard
2 industrial classification code as compiled by the United States
3 department of labor.

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

8 (i) Payments to subcontractors for a construction project under
9 a contract specific to that project.

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

14 (f) For the 2008 tax year and each tax year after 2008, all
15 film rental or royalty payments paid by a theater owner to a film
16 distributor, a film producer, or a film distributor and producer.

17 (g) For a taxpayer licensed under article 25 or 26 of the
18 occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and
19 339.2601 to 339.2637, payments to an independent contractor
20 licensed under article 25 or 26 of the occupational code, 1980 PA
21 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637.

22 (h) For a person classified under the 2002 North American
23 industrial classification system number 484 as compiled by the
24 United States office of management and budget that does not qualify
25 for a credit under section 417, payments to subcontractors to
26 transport freight by motor vehicle under a contract specific to
27 that freight to be transported by motor vehicle.

1 (7) "Revenue mile" means the transportation for a
2 consideration of 1 net ton in weight or 1 passenger the distance of
3 1 mile.

4 Sec. 201. (1) Except as otherwise provided in this act, there
5 is levied and imposed a business income tax on every taxpayer with
6 business activity within this state unless prohibited by 15 USC 381
7 to 384. The business income tax is imposed on the business income
8 tax base, after allocation or apportionment to this state, at the
9 rate of 4.95%.

10 (2) The business income tax base means a taxpayer's business
11 income subject to the following adjustments, before allocation or
12 apportionment, and the adjustments in subsections (5), (6), and (7)
13 after allocation or apportionment:

14 (a) Add interest income and dividends derived from obligations
15 or securities of states other than this state, in the same amount
16 that was excluded from federal taxable income, less the related
17 portion of expenses not deducted in computing federal taxable
18 income because of sections 265 and 291 of the internal revenue
19 code.

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

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

25 (d) To the extent included in federal taxable income, deduct
26 dividends and royalties received from persons other than United
27 States persons and foreign operating entities, including, but not

1 limited to, amounts determined under section 78 of the internal
2 revenue code or sections 951 to 964 of the internal revenue code.

3 (e) To the extent included in federal taxable income, add the
4 loss or subtract the income from the business income tax base that
5 is attributable to another entity whose business activities are
6 taxable under this section or would be subject to the tax under
7 this section if the business activities were in this state.

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

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

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

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

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

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

6 (h) To the extent included in ~~federal taxable~~ **BUSINESS** income,
7 deduct any earnings that are net earnings from self-employment as
8 defined under section 1402 of the internal revenue code of the
9 taxpayer or a partner or limited liability company member of the
10 taxpayer ~~except to the extent that those net earnings represent a~~
11 ~~reasonable return on capital~~ **AND THAT ARE REPORTED TO THE TAXPAYER**
12 **OR A PARTNER OR LIMITED LIABILITY COMPANY MEMBER ON A SCHEDULE K-1-**
13 **FORM 1065 AS SELF-EMPLOYMENT EARNINGS FOR FEDERAL INCOME TAX**
14 **PURPOSES.**

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

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

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

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

24 (j) For tax years that begin after December 31, 2009, to the
25 extent included in federal taxable income, deduct the amount of a
26 charitable contribution made to the advance tuition payment fund
27 created under section 9 of the Michigan education trust act, 1986

1 PA 316, MCL 390.1429.

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

1 between the person's qualifying asset's net book value shown on the
2 person's books and records for the first fiscal period ending after
3 July 12, 2007 and the qualifying asset's tax basis on that same
4 date.

5 (b) "Qualifying asset" means any asset shown on the person's
6 books and records for the first fiscal period ending after July 12,
7 2007, in accordance with generally accepted accounting principles.

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

15 (5) Deduct any available business loss incurred after December
16 31, 2007. As used in this subsection, "business loss" means a
17 negative business income taxable amount after allocation or
18 apportionment. **FOR PURPOSES OF THIS SUBSECTION, A TAXPAYER THAT**
19 **ACQUIRES THE ASSETS OF ANOTHER CORPORATION IN A TRANSACTION**
20 **DESCRIBED UNDER SECTION 381(A)(1) OR (2) OF THE INTERNAL REVENUE**
21 **CODE MAY DEDUCT ANY BUSINESS LOSS ATTRIBUTABLE TO THAT DISTRIBUTOR**
22 **OR TRANSFEROR CORPORATION.** The business loss shall be carried
23 forward to the year immediately succeeding the loss year as an
24 offset to the allocated or apportioned business income tax base,
25 then successively to the next 9 taxable years following the loss
26 year or until the loss is used up, whichever occurs first, but for
27 not more than 10 taxable years after the loss year.

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

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

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

1 for completion and operation of the project and those rental units.

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

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

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

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

25 (i) Mortgage or other financing provided by the Michigan state
26 housing development authority created in section 21 of the state
27 housing development authority act of 1966, 1966 PA 346, MCL

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

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

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

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

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

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

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

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

27 (ix) Financing or funding under the low-income housing tax

1 credit program under section 42 of the internal revenue code.

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

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

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

14 (a) Sales of tangible personal property are in this state if
15 the property is shipped or delivered, or, in the case of
16 electricity and gas, the contract requires the property to be
17 shipped or delivered, to any purchaser within this state based on
18 the ultimate destination at the point that the property comes to
19 rest regardless of the free on board point or other conditions of
20 the sales. **FOR PURPOSES OF DETERMINING THE ULTIMATE DESTINATION AND**
21 **WHEN THE PROPERTY COMES TO REST UNDER THIS SUBDIVISION, IF THE**
22 **BUYER DOES NOT IDENTIFY THE ULTIMATE DESTINATION AT THE TIME OF THE**
23 **TRANSACTION, PROPERTY IS CONSIDERED TEMPORARILY STORED AT THAT**
24 **DESTINATION IF IT IS STORED FOR FEWER THAN 30 DAYS.**

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

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

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

27 (e) Royalties and other income received for the use of or for

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

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

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

25 (b) Sales derived from securities brokerage services
26 attributable to this state are determined by multiplying the total
27 dollar amount of receipts from securities brokerage services by a

1 fraction, the numerator of which is the sales of securities
2 brokerage services to customers within this state, and the
3 denominator of which is the sales of securities brokerage services
4 to all customers. Receipts from securities brokerage services
5 include commissions on transactions, the spread earned on principal
6 transactions in which the broker buys or sells from its account,
7 total margin interest paid on behalf of brokerage accounts owned by
8 the broker's customers, and fees and receipts of all kinds from the
9 underwriting of securities. If receipts from brokerage services can
10 be associated with a particular customer, but it is impractical to
11 associate the receipts with the address of the customer, then the
12 address of the customer shall be presumed to be the address of the
13 branch office that generates the transactions for the customer.

14 (c) Sales of services that are derived directly or indirectly
15 from the sale of management, distribution, administration, or
16 securities brokerage services to, or on behalf of, a regulated
17 investment company or its beneficial owners, including receipts
18 derived directly or indirectly from trustees, sponsors, or
19 participants of employee benefit plans that have accounts in a
20 regulated investment company, shall be attributable to this state
21 to the extent that the shareholders of the regulated investment
22 company are domiciled within this state. For purposes of this
23 subdivision, "domicile" means the shareholder's mailing address on
24 the records of the regulated investment company. If the regulated
25 investment company or the person providing management services to
26 the regulated investment company has actual knowledge that the
27 shareholder's primary residence or principal place of business is

1 different than the shareholder's mailing address, then the
2 shareholder's primary residence or principal place of business is
3 the shareholder's domicile. A separate computation shall be made
4 with respect to the receipts derived from each regulated investment
5 company. The total amount of sales attributable to this state shall
6 be equal to the total receipts received by each regulated
7 investment company multiplied by a fraction determined as follows:

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

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

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

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

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

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

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

27 (4) Interest from loans secured by real property is in this

1 state if the property is located within this state or if the
2 property is located both within this state and 1 or more other
3 states, if more than 50% of the fair market value of the real
4 property is located within this state, or if more than 50% of the
5 fair market value of the real property is not located within any 1
6 state, if the borrower is located in this state. The determination
7 of whether the real property securing a loan is located within this
8 state shall be made as of the time the original agreement was made
9 and any and all subsequent substitutions of collateral shall be
10 disregarded.

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

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

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

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

1 by its cardholders, are in this state if the commercial domicile of
2 the merchant is in this state.

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

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

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

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

23 (i) Interest, dividends, and other income from investment
24 assets and activities and from trading assets and activities,
25 including, but not limited to, investment securities; trading
26 account assets; federal funds; securities purchased and sold under
27 agreements to resell or repurchase; options; futures contracts;

1 forward contracts; notional principal contracts such as swaps;
2 equities; and foreign currency transactions are in this state if
3 the average value of the assets is assigned to a regular place of
4 business of the taxpayer within this state. Interest from federal
5 funds sold and purchased and from securities purchased under resale
6 agreements and securities sold under repurchase agreements are in
7 this state if the average value of the assets is assigned to a
8 regular place of business of the taxpayer within this state. The
9 amount of receipts and other income from investment assets and
10 activities is in this state if assets are assigned to a regular
11 place of business of the taxpayer within this state.

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

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

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

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

27 (i) 50% of those receipts that either originate or terminate in

1 this state.

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

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

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

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

24 (12) For purposes of subsection (11), if a taxpayer can show
25 that revenue mile information is not available or cannot be
26 obtained without unreasonable expense to the taxpayer, receipts
27 attributable to this state shall be that portion of the revenue

1 derived from transportation services everywhere performed that the
2 miles of transportation services performed in this state bears to
3 the miles of transportation services performed everywhere. If the
4 department determines that the information required for the
5 calculations under subsection (11) are not available or cannot be
6 obtained without unreasonable expense to the taxpayer, the
7 department may use other available information that in the opinion
8 of the department will result in an equitable allocation of the
9 taxpayer's receipts to this state.

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

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

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

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

27 (15) Receipts from the sale of postpaid telecommunications

1 service are in this state if the origination point of the
2 telecommunication signal, as first identified by the service
3 provider's telecommunication system or as identified by information
4 received by the seller from its service provider if the system used
5 to transport telecommunication signals is not the seller's, is
6 located in this state.

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

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

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

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

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

24 (d) The receipts from the sale of service for segments with a
25 channel termination point located in this state and in 2 or more
26 other states or equivalent jurisdictions, and which segments are
27 not separately billed, are in this state based on a percentage

1 determined by dividing the number of customer channel termination
2 points in this state by the total number of customer channel
3 termination points.

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

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

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

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

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

25 (d) Gross receipts from sales of telecommunications services
26 to other telecommunication service providers for resale shall be
27 sourced to this state using the apportionment concepts used for

1 non-resale receipts of telecommunications services if the
2 information is readily available to make that determination. If the
3 information is not readily available, then the taxpayer may use any
4 other reasonable and consistent method.

5 (20) Except as otherwise provided under this subsection, for a
6 taxpayer whose business activities include live radio or television
7 programming as described in subsector code 7922 of industry group
8 792 under the standard industrial classification code as compiled
9 by the United States department of labor or are included in
10 industry ~~groups~~**GROUP** 483, 484, 781, or 782 under the standard
11 industrial classification code as compiled by the United States
12 department of labor, or any combination of the business activities
13 included in those groups, media receipts are in this state and
14 attributable to this state only if the commercial domicile of the
15 customer is in this state and the customer has a direct connection
16 or relationship with the taxpayer pursuant to a contract under
17 which the media receipts are derived. For media receipts from the
18 sale of advertising, if the customer of that advertising is
19 commercially domiciled in this state and receives some of the
20 benefit of the sale of that advertising in this state, the media
21 receipts from the advertising to that customer are included in the
22 numerator of the apportionment factor in proportion to the extent
23 that the customer receives the benefit of the advertising in this
24 state. For purposes of this subsection, if the taxpayer is a
25 broadcaster and if the customer receives some of the benefit of the
26 advertising in this state, the media receipts for that sale of
27 advertising from that customer shall be proportioned based on the

1 ratio that the broadcaster's viewing or listening audience in this
2 state bears to its total viewing or listening audience everywhere.
3 As used in this subsection:

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

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

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

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

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

23 Sec. 403. (1) Notwithstanding any other provision in this act,
24 the credits provided in this section **AND SECTION 405** shall be taken
25 before any **UNUSED CARRYFORWARD ALLOWED UNDER SECTION 401 AND BEFORE**
26 **ANY** other credit under this act. Except as otherwise provided in
27 subsection (6), for the 2008 tax year, the total combined credit

1 allowed under this section shall not exceed 50% of the tax
2 liability imposed under this act before the imposition and levy of
3 the surcharge under section 281. For the 2009 tax year and each tax
4 year after 2009, the total combined credit allowed under this
5 section shall not exceed 52% of the tax liability imposed under
6 this act before the imposition and levy of the surcharge under
7 section 281.

8 (2) Subject to the limitation in subsection (1), for the 2008
9 tax year a taxpayer may claim a credit against the tax imposed by
10 this act equal to 0.296% of the taxpayer's compensation in this
11 state. For the 2009 tax year and each tax year after 2009, subject
12 to the limitation in subsection (1), a taxpayer may claim a credit
13 against the tax imposed by this act equal to 0.370% of the
14 taxpayer's compensation in this state. For purposes of this
15 subsection, a taxpayer includes a person subject to the tax imposed
16 under chapter 2A and a person subject to the tax imposed under
17 chapter 2B. A professional employer organization shall not include
18 payments by the professional employer organization to the officers
19 and employees of a client of the professional employer organization
20 whose employment operations are managed by the professional
21 employer organization. A client may include payments by the
22 professional employer organization to the officers and employees of
23 the client whose employment operations are managed by the
24 professional employer organization.

25 (3) Subject to the limitation in subsection (1), for the 2008
26 tax year a taxpayer may claim a credit against the tax imposed by
27 this act equal to 2.32% multiplied by the result of subtracting the

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

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

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

23 (c) For tangible assets, other than mobile tangible assets,
24 purchased or acquired for use outside of this state in a tax year
25 beginning after December 31, 2007 and subsequently transferred into
26 this state and purchased or acquired for use in a business
27 activity, calculate the federal basis used for determining gain or

1 loss as of the date the tangible assets were physically located in
2 this state for use in a business activity plus the cost of
3 fabrication and installation of the tangible assets in this state.

4 ~~(d) If the cost of tangible assets described in subdivision~~
5 ~~(a) was paid or accrued in a tax year beginning after December 31,~~
6 ~~2007, or before December 31, 2007 to~~ **TO** the extent the credit is
7 used and at the rate at which the credit was used under former 1975
8 PA 228 or this act, calculate the gross proceeds or benefit derived
9 from the sale or other disposition of the tangible assets minus the
10 gain, multiplied by the apportionment factor for the taxable year
11 as prescribed in chapter 3, and plus the loss, multiplied by the
12 apportionment factor for the taxable year as prescribed in chapter
13 3 from the sale or other disposition reflected in federal taxable
14 income and minus the gain from the sale or other disposition added
15 to the business income tax base in section 201.

16 ~~(e) If the cost of tangible assets described in subdivision~~
17 ~~(b) was paid or accrued in a tax year beginning after December 31,~~
18 ~~2007, or before December 31, 2007 to~~ **TO** the extent the credit is
19 used and at the rate at which the credit was used under former 1975
20 PA 228 or this act, calculate the gross proceeds or benefit derived
21 from the sale or other disposition of the **MOBILE** tangible assets
22 minus the gain and plus the loss from the sale or other disposition
23 reflected in federal taxable income and minus the gain from the
24 sale or other disposition added to the business income tax base in
25 section 201. This amount shall be multiplied by the apportionment
26 factor for the tax year as prescribed in chapter 3.

27 ~~(f) For assets purchased or acquired in a tax year beginning~~

1 ~~after December 31, 2007, or before December 31, 2007 to~~ **TO** the
2 extent the credit is used and at the rate at which the credit was
3 used under former 1975 PA 228 or this act, **FOR ASSETS** that were
4 eligible for a credit under subdivision (a) or (c) and that were
5 transferred out of this state, calculate the federal basis used for
6 determining gain or loss as of the date of the transfer.

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

11 (5) A taxpayer that claims a credit under this section is not
12 prohibited from claiming a credit under section 405. However, the
13 taxpayer shall not claim a credit under this section and section
14 405 based on the same costs and expenses.

15 (6) For a taxpayer primarily engaged in furnishing electric
16 and gas utility service that makes capital investments in electric
17 and gas distribution assets for which a portion of the credit
18 provided under subsection (3) would be denied for the 2008 tax year
19 by reason of the 50% limitation of subsection (1), the 50%
20 limitation on the total combined credit for the 2008 tax year
21 provided in subsection (1) shall be increased by an amount not to
22 exceed the lesser of the amount of the denied credit or 50% of the
23 tax increase under this act accrued for financial reporting
24 purposes due to the elimination of the deduction under section
25 168(k) of the internal revenue code by the amendatory act that
26 added this subsection. Provided, however, that the total combined
27 credit allowed under this section for the 2008 tax year shall not

1 exceed 80% of the tax liability imposed under this act after the
2 imposition and levy of the surcharge under section 281.

3 Sec. 433. (1) A taxpayer that is a business located and
4 conducting business activity within a renaissance zone may claim a
5 credit against the tax imposed by this act for the tax year to the
6 extent and for the duration provided pursuant to the Michigan
7 renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, ~~equal~~
8 ~~to the lesser of the following~~ **AS FOLLOWS:**

9 **(A) EXCEPT AS OTHERWISE PROVIDED UNDER SUBDIVISION (B), FOR A**
10 **TAXPAYER LOCATED AND CONDUCTING BUSINESS ACTIVITY IN A RENAISSANCE**
11 **ZONE AFTER NOVEMBER 30, 2002, A CREDIT EQUAL TO THE LESSER OF THE**
12 **FOLLOWING:**

13 *(i)* ~~(a)~~—The tax liability attributable to business activity
14 conducted within a renaissance zone in the tax year.

15 *(ii)* ~~(b)~~—Ten percent of adjusted services performed in a
16 designated renaissance zone.

17 **(B) ~~(c)~~—For a taxpayer located and conducting business**
18 **activity in a renaissance zone before December 31-1, 2002, ~~the~~ A**
19 **CREDIT EQUAL TO THE GREATER OF THE FOLLOWING:**

20 *(i)* **THE AMOUNT CALCULATED UNDER SUBDIVISION (A) (i) OR (ii),**
21 **WHICHEVER IS LESS.**

22 *(ii)* **THE** product of the following:

23 **(A) ~~(i)~~** The credit claimed under section 39b of former 1975 PA
24 228 for the tax year ending in 2007.

25 **(B) ~~(ii)~~**—The ratio of the taxpayer's payroll in this state in
26 the tax year divided by the taxpayer's payroll in this state in its
27 tax year ending in 2007 under former 1975 PA 228.

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

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

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

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

14 (5) A taxpayer that claims a credit under this section shall
15 not employ, pay a speaker fee to, or provide any remuneration,
16 compensation, or consideration to any person employed by the state,
17 the state administrative board created in 1921 PA 2, MCL 17.1 to
18 17.3, or the renaissance zone review board created in **SECTION 5 OF**
19 **THE RENAISSANCE ZONE ACT**, 1996 PA 376, MCL ~~125.2681 to 125.2696,~~
20 **125.2685**, whose employment relates or related in any way to the
21 authorization or enforcement of the credit allowed under this
22 section for any year in which the taxpayer claims a credit under
23 this section and for the 3 years after the last year that a credit
24 is claimed.

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

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

7 (8) For purposes of this section, taxpayer includes a person
8 subject to the tax imposed under ~~chapters~~ **CHAPTER 2A** and **A PERSON**
9 **SUBJECT TO THE TAX IMPOSED UNDER CHAPTER 2B.**

10 (9) As used in this section:

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

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

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

25 (A) Business income.

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

1 everywhere during the tax year.

2 (C) The renaissance zone business activity factor.

3 (b) "Casino" means a casino regulated by this state pursuant
4 to the Michigan gaming control and revenue act, 1996 IL 1, MCL
5 432.201 to 432.226.

6 (c) "New property" means property that has not been subject
7 to, or exempt from, the collection of taxes under the general
8 property tax act, 1893 PA 206, MCL 211.1 to ~~211.157~~, **211.155**, and
9 has not been subject to, or exempt from, ad valorem property taxes
10 levied in another state, except that receiving an exemption as
11 inventory property does not disqualify property.

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

14 (e) "Renaissance zone" means that term as defined in the
15 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
16 125.2696.

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

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

27 Sec. 511. A unitary business group shall file a combined

1 return that includes each United States person, other than a
2 foreign operating entity, that is included in the unitary business
3 group. Each United States person included in a unitary business
4 group or included in a combined return shall be treated as a single
5 person and all transactions between those persons included in the
6 unitary business group shall be eliminated from the business income
7 tax base, modified gross receipts tax base, and ~~the~~ **FOR PURPOSES OF**
8 **DETERMINING THE EXEMPTIONS, DEDUCTIONS, SUBTRACTIONS, CREDITS,**
9 **apportionment formula, AND FILING THRESHOLD** under this act. If a
10 United States person included in a unitary business group or
11 included in a combined return is subject to the tax under chapter
12 2A or 2B, any business income attributable to that person shall be
13 eliminated from the business income tax base, any modified gross
14 receipts attributable to that person shall be eliminated from the
15 modified gross receipts tax base, and any sales attributable to
16 that person shall be eliminated from the apportionment formula
17 under this act.

18 Enacting section 1. This amendatory act is curative and
19 intended to clarify the original intent of 2007 PA 36.