

SENATE BILL No. 369

May 10, 2011, Introduced by Senators BRANDENBURG and BIEDA and referred to the Committee on Finance.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending sections 105, 111, 113, 117, 201, 207, 305, 403, 405, 413, 433, 505, and 511 (MCL 208.1105, 208.1111, 208.1113, 208.1117, 208.1201, 208.1207, 208.1305, 208.1403, 208.1405, 208.1413, 208.1433, 208.1505, and 208.1511), sections 105, 405, and 413 as amended by 2007 PA 145, section 111 as amended by 2010 PA 133, section 113 as amended by 2008 PA 472, section 117 as amended by 2009 PA 142, section 201 as amended by 2009 PA 135, section 207 as amended by 2008 PA 435, section 305 as amended by 2007 PA 205, section 403 as amended by 2008 PA 434, and section 433 as amended by 2007 PA 215.

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

13 (2) "Business income" means that part of federal taxable
14 income derived from business activity. For a partnership or S
15 corporation, business income includes payments and items of income
16 and expense that are attributable to business activity of the
17 partnership or S corporation and separately reported to the
18 partners or shareholders. For an organization that is a mutual or
19 cooperative electric company exempt under section 501(c)(12) of the
20 internal revenue code, business income equals the organization's
21 excess or deficiency of revenues over expenses as reported to the
22 federal government by those organizations exempt from the federal
23 income tax under the internal revenue code, less capital credits
24 paid to members of that organization, less income attributed to
25 equity in another organization's net income, and less income
26 resulting from a charge approved by a state or federal regulatory
27 agency that is restricted for a specified purpose and refundable if

1 it is not used for the specified purpose. For a tax-exempt person,
2 business income means only that part of federal taxable income
3 derived from unrelated business activity. **FOR A PERSON THAT IS**
4 **ORGANIZED EXCLUSIVELY TO CONDUCT INVESTMENT ACTIVITY AND THAT DOES**
5 **NOT CONDUCT INVESTMENT ACTIVITY FOR ANY PERSON OTHER THAN AN**
6 **INDIVIDUAL OR A GROUP OF INDIVIDUALS AND FOR A COMMON TRUST FUND**
7 **ESTABLISHED UNDER THE COLLECTIVE INVESTMENTS FUNDS ACT, 1941 PA**
8 **174, MCL 555.101 TO 555.113, BUSINESS INCOME EXCLUDES INCOME**
9 **DERIVED FROM INVESTMENT ACTIVITY UNLESS THE ACTIVITY IS IN THE**
10 **REGULAR COURSE OF THE PERSON'S TRADE OR BUSINESS.** For an
11 individual, estate, ~~partnership organized exclusively for estate or~~
12 ~~gift planning purposes, or trust~~ **OR OTHER PERSON** organized
13 ~~exclusively for estate or gift planning purposes,~~ business income
14 is that part of federal taxable income derived from transactions,
15 activities, and sources in the regular course of the ~~taxpayer's~~
16 **PERSON'S** trade or business, including the following:

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

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

24 (c) Income derived from isolated sales, leases, ~~assignment,~~
25 **ASSIGNMENTS**, licenses, divisions, or other infrequently occurring
26 dispositions, transfers, or transactions involving **TANGIBLE,**
27 **INTANGIBLE, OR REAL** property if the property is or was used in the

1 ~~taxpayer's~~ trade or business operation.

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

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

6 **(F)** ~~(e)~~ Income not included in business income for an
7 individual, estate, ~~partnership organized exclusively for estate or~~
8 ~~gift planning purposes, or trust~~ **OR OTHER PERSON** organized
9 ~~exclusively for estate or gift planning purposes~~ includes, but is
10 not limited to, the following:

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

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

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

1 interstate, or foreign commerce carried on for direct or indirect
2 gain, benefit, or advantage to the taxpayer or to others except for
3 the following:

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

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

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

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

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

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

25 (v) Property not described under subparagraph (iv) that is
26 purchased by the taxpayer on behalf of the principal and that the
27 taxpayer does not take title to or use in the course of performing

1 its contractual business activities.

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

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

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

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

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

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

27 (h) Proceeds from any of the following:

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

4 (ii) The original issue of debt instruments.

5 (i) Refunds from returned merchandise.

6 (j) Cash and in-kind discounts.

7 (k) Trade discounts.

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

9 (m) Security deposits.

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

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

12 (p) Proceeds from a sale, transaction, exchange, involuntary
13 conversion, maturity, redemption, repurchase, recapitalization, or
14 other disposition or reorganization of tangible, intangible, or
15 real property, less any gain from the disposition or reorganization
16 to the extent that the gain is included in the taxpayer's federal
17 taxable income, if the property satisfies 1 or more of the
18 following:

19 (i) The property is a capital asset as defined in section
20 1221(a) of the internal revenue code.

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

24 (iii) The property is used in a hedging transaction entered into
25 by the taxpayer in the normal course of the taxpayer's trade or
26 business primarily to manage the risk of exposure to foreign
27 currency fluctuations that affect assets, liabilities, profits,

1 losses, equity, or investments in foreign operations; interest rate
2 fluctuations; or commodity price fluctuations. For purposes of this
3 subparagraph, the actual transfer of title of real or tangible
4 personal property to another person is not a hedging transaction.
5 Only the overall net gain from the hedging transactions entered
6 into during the tax year is included in gross receipts. As used in
7 this subparagraph, "hedging transaction" means that term as defined
8 under section 1221 of the internal revenue code regardless of
9 whether the transaction was identified by the taxpayer as a hedge
10 for federal income tax purposes, provided, however, that
11 transactions excluded under this subparagraph and not identified as
12 a hedge for federal income tax purposes shall be identifiable to
13 the department by the taxpayer as a hedge in its books and records.

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

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

27 (r) For a sales finance company, as defined in section 2 of

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

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

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

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

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

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

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

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

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

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

4 (C) Receipts derived from isolated sales, leases, assignments,
5 licenses, divisions, or other infrequently occurring dispositions,
6 transfers, or transactions involving tangible, intangible, or real
7 property if the property is or was used in the ~~taxpayer's~~ **PERSON'S**
8 trade or business operation.

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

12 (E) Receipts derived from the lease or rental of real
13 property.

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

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

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

23 (x) Receipts derived from investment activity **OTHER THAN**
24 **RECEIPTS FROM TRANSACTIONS, ACTIVITIES, AND SOURCES IN THE REGULAR**
25 **COURSE OF THE PERSON'S TRADE OR BUSINESS** by a person that is
26 organized exclusively to conduct investment activity and that does
27 not conduct investment activity for any person other than an

1 individual or a person related to that individual **GROUP OF**
2 **INDIVIDUALS** or by a common trust fund established under the
3 collective investment funds act, 1941 PA 174, MCL 555.101 to
4 555.113. ~~For purposes of this subdivision, a person is related to~~
5 ~~an individual if that person is a spouse, brother or sister,~~
6 ~~whether of the whole or half blood or by adoption, ancestor, lineal~~
7 ~~descendent of that individual or related person, or a trust~~
8 ~~benefiting that individual or 1 or more persons related to that~~
9 ~~individual.~~

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

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

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

25 (i) Sales or use taxes collected from or reimbursed by a
26 consumer or other taxes the taxpayer collected directly from or was
27 reimbursed by a purchaser and remitted to a local, state, or

1 federal tax authority, phased in over a 5-year period starting with
2 50% of that amount in the 2008 tax year, 60% in the 2009 tax year,
3 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the
4 2012 tax year and each tax year thereafter.

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

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

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

1 in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax
2 year, and 100% in the 2012 tax year and each tax year thereafter.

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

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

25 (vii) Any deposit required under any of the following, phased
26 in over a 5-year period starting with 50% of that amount in the
27 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year,

1 75% in the 2011 tax year, and 100% in the 2012 tax year and each
2 tax year thereafter:

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

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

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

6 (D) Any substantially similar beverage container deposit law
7 of another state.

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

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

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

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

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

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

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

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

20 (ee) For a taxpayer that provides health care management
21 consulting services, amounts received by the taxpayer as fees from
22 its clients that are expended by the taxpayer to reimburse those
23 clients for labor and nonlabor services that are paid by the client
24 and reimbursed to the client pursuant to a services agreement.

25 **(FF) AMOUNTS RECEIVED PURSUANT TO A DISCHARGE OF INDEBTEDNESS**
26 **AS DESCRIBED UNDER SECTION 61(A)(12) OF THE INTERNAL REVENUE CODE,**
27 **INCLUDING FORGIVENESS OF A NONRECOURSE DEBT.**

1 (2) "Insurance company" means an authorized insurer as defined
2 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
3 500.106.

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

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

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

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

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

25 (d) For a person that is a securities trader, broker, or
26 dealer or a person included in the unitary business group of that
27 securities trader, broker, or dealer that buys and sells for its

1 own account, contracts that are subject to the commodity exchange
2 act, 7 USC 1 to 27f, the cost of securities as defined under
3 section 475(c)(2) of the internal revenue code and for a securities
4 trader the cost of commodities as defined under section 475(e)(2)
5 and for a broker or dealer the cost of commodities as defined under
6 section 475(e)(2)(b), (c), and (d) of the internal revenue code,
7 excluding interest expense other than interest expense related to
8 repurchase agreements. As used in this subdivision:

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

11 (ii) "Dealer" means that term as defined under section
12 78c(a)(5) of the securities exchange act of 1934, 15 USC 78c.

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

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

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

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

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

23 (a) The chairperson of the board.

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

26 (c) Persons performing similar duties to persons described in
27 subdivisions (a) and (b), **INCLUDING, BUT NOT LIMITED TO, MAKING**

1 **MAJOR DECISIONS AND TAKING ON MAJOR RESPONSIBILITIES.**

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

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

6 (3) "Person" means an individual, firm, bank, financial
7 institution, insurance company, limited partnership, limited
8 liability partnership, copartnership, partnership, joint venture,
9 association, corporation, subchapter S corporation, limited
10 liability company, receiver, estate, trust, or any other group or
11 combination of groups acting as a unit. **EXCEPT FOR A FOREIGN PERSON
12 AS DEFINED IN SECTION 207(8)(D), A PERSON DISREGARDED AS AN ENTITY
13 SEPARATE FROM ITS OWNER PURSUANT TO THE INTERNAL REVENUE CODE AND
14 FEDERAL REGULATIONS SHALL BE TREATED IN THE SAME MANNER FOR
15 PURPOSES OF THIS ACT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (i) Payments to subcontractors for a construction project under
6 a contract specific to that project.

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

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

14 (g) For a taxpayer licensed under article 25 or 26 of the
15 occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and
16 339.2601 to 339.2637, payments to an independent contractor
17 licensed under article 25 or 26 of the occupational code, 1980 PA
18 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637.

19 (7) "Revenue mile" means the transportation for a
20 consideration of 1 net ton in weight or 1 passenger the distance of
21 1 mile.

22 Sec. 117. (1) "Tangible personal property" means that term as
23 defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

24 (2) "Tax" means the tax imposed under this act, including
25 interest and penalties under this act, unless the term is given a
26 more limited meaning in the context of this act or a provision of
27 this act.

1 (3) "Tax-exempt person" means an organization that is exempt
2 from federal income tax under section 501(a) of the internal
3 revenue code, and a partnership, limited liability company, joint
4 venture, unincorporated association, or other group or combination
5 of organizations acting as a unit if all such organizations are
6 exempt from federal income tax under section 501(a) of the internal
7 revenue code and if all activities of the unit are exclusively
8 related to the charitable, educational, or other purposes or
9 functions that are the basis for the exemption of such
10 organizations from federal income tax, except the following:

11 (a) An organization exempt under section 501(c)(12) or (16) of
12 the internal revenue code.

13 (b) An organization exempt under section 501(c)(4) of the
14 internal revenue code that would be exempt under section 501(c)(12)
15 of the internal revenue code but for its failure to meet the
16 requirement in section 501(c)(12) that 85% or more of its income
17 must consist of amounts collected from members.

18 (4) "Tax year" means the calendar year, or the fiscal year
19 ending during the calendar year, upon the basis of which the tax
20 base of a taxpayer is computed under this act. If a return is made
21 for a fractional part of a year, tax year means the period for
22 which the return is made. Except for the first return required by
23 this act, a taxpayer's tax year is for the same period as is
24 covered by its federal income tax return. A taxpayer that has a 52-
25 or 53-week tax year beginning not more than 7 days before December
26 31 of any year is considered to have a tax year beginning after
27 December of that tax year. If the term tax year in this act is used

1 in reference to 1 or more previous or preceding tax years and those
2 referenced tax years are before January 1, 2008, then those
3 referenced tax years are deemed those same tax years during which
4 former 1975 PA 228 was in effect.

5 (5) "Taxpayer" means a person or a unitary business group
6 liable for a tax, interest, or penalty under this act.

7 (6) "Unitary business group" means a group of United States
8 persons, other than a foreign operating entity, 1 of which owns or
9 controls, directly or indirectly, more than 50% of the ownership
10 interest with voting rights or ownership interests that confer
11 comparable rights to voting rights of the other United States
12 persons, and that has business activities or operations which
13 result in a flow of value between or among persons included in the
14 unitary business group or has business activities or operations
15 that are integrated with, are dependent upon, or contribute to each
16 other. For purposes of this subsection, flow of value is determined
17 by reviewing the totality of facts and circumstances of business
18 activities and operations.

19 (7) "United States person" means that term as defined in
20 section 7701(a)(30) of the internal revenue code, **BUT SHALL NOT**
21 **INCLUDE A FOREIGN PERSON AS DEFINED IN SECTION 207(8)(D)**.

22 (8) "Unrelated business activity" means, for a tax-exempt
23 person, business activity directly connected with an unrelated
24 trade or business as defined in section 513 of the internal revenue
25 code.

26 Sec. 201. (1) Except as otherwise provided in this act, there
27 is levied and imposed a business income tax on every taxpayer with

1 business activity within this state unless prohibited by 15 USC 381
2 to 384. The business income tax is imposed on the business income
3 tax base, after allocation or apportionment to this state, at the
4 rate of 4.95%.

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

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

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

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

20 (d) To the extent included in federal taxable income, deduct
21 dividends and royalties received from persons other than United
22 States persons and foreign operating entities, including, but not
23 limited to, amounts determined under section 78 of the internal
24 revenue code or sections 951 to 964 of the internal revenue code.

25 (e) To the extent included in federal taxable income, add the
26 loss or subtract the income from the business income tax base that
27 is attributable to another entity whose business activities are

1 taxable under this section or would be subject to the tax under
2 this section if the business activities were in this state.

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

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

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

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

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

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

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

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

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

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

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

19 (j) For tax years that begin after December 31, 2009, to the
20 extent included in federal taxable income, deduct the amount of a
21 charitable contribution made to the advance tuition payment fund
22 created under section 9 of the Michigan education trust act, 1986
23 PA 316, MCL 390.1429.

24 (3) The deduction under subsection (2)(i) shall not exceed the
25 amount necessary to offset the net deferred tax liability of the
26 taxpayer as computed in accordance with generally accepted
27 accounting principles which would otherwise result from the

1 imposition of the business income tax under this section and the
2 modified gross receipts tax under section 203 if the deduction
3 provided under this subdivision were not allowed. The deduction
4 under subsection (2)(i) is intended to flow through and reduce the
5 surcharge imposed and levied under section 281. For purposes of the
6 calculation of the deduction under subsection (2)(i), a book-tax
7 difference shall only be used once in the calculation of the
8 deduction arising from the taxpayer's business income tax base
9 under this section and once in the calculation of the deduction
10 arising from the taxpayer's modified gross receipts tax base under
11 section 203. The adjustment under subsection (2)(i) shall be
12 calculated without regard to the federal effect of the deduction.
13 If the adjustment under subsection (2)(i) is greater than the
14 taxpayer's business income tax base, any adjustment that is unused
15 may be carried forward and applied as an adjustment to the
16 taxpayer's business income tax base before apportionment in future
17 years. In order to claim this deduction, the department may require
18 the taxpayer to report the amount of this deduction on a form as
19 prescribed by the department that is to be filed on or after the
20 date that the first quarterly return and estimated payment are due
21 under this act. **IF THE AMOUNT OF THE DEDUCTION CALCULATED UNDER**
22 **SUBSECTION (2)(I) CHANGES FROM THE AMOUNT ORIGINALLY REPORTED AND**
23 **FILED WITH THE DEPARTMENT, THE TAXPAYER MAY FILE AN AMENDED REPORT.**
24 As used in subsection (2)(i) and this subsection:

25 (a) "Book-tax difference" means the difference, if any,
26 between the person's qualifying asset's net book value shown on the
27 person's books and records for the first fiscal period ending after

1 July 12, 2007 and the qualifying asset's tax basis on that same
2 date.

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

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

13 (5) Deduct any available business loss incurred after December
14 31, 2007. As used in this subsection, "business loss" means a
15 negative business income taxable amount after allocation or
16 apportionment. **FOR PURPOSES OF THIS SUBSECTION, A TAXPAYER THAT**
17 **ACQUIRES THE ASSETS OF ANOTHER CORPORATION IN A TRANSACTION**
18 **DESCRIBED UNDER SECTION 381(A) (1) OR (2) OF THE INTERNAL REVENUE**
19 **CODE MAY DEDUCT ANY BUSINESS LOSS ATTRIBUTABLE TO THAT DISTRIBUTOR**
20 **OR TRANSFEROR CORPORATION.** The business loss shall be carried
21 forward to the year immediately succeeding the loss year as an
22 offset to the allocated or apportioned business income tax base,
23 then successively to the next 9 taxable years following the loss
24 year or until the loss is used up, whichever occurs first, but for
25 not more than 10 taxable years after the loss year.

26 (6) Deduct any gain from the sale of any residential rental
27 units in this state to a qualified affordable housing project that

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

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

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

27 (8) If a qualified affordable housing project no longer meets

1 the requirements of subsection (9)(b) or fails to operate those
2 residential rental units as rent restricted units in accordance
3 with the operation agreement and the requirements of subsection
4 (9)(c), the taxpayer is entitled to the deductions under
5 subsections (6) and (7) as long as the qualified affordable housing
6 project continues to offer some of the residential rental units
7 purchased as rent restricted units in accordance with the operation
8 agreement.

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

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

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

23 (i) Mortgage or other financing provided by the Michigan state
24 housing development authority created in section 21 of the state
25 housing development authority act of 1966, 1966 PA 346, MCL
26 125.1421, the United States department of housing and urban
27 development, the United States department of agriculture for rural

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

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

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

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

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

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

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

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

25 (ix) Financing or funding under the low-income housing tax
26 credit program under section 42 of the internal revenue code.

27 (x) Financing or other subsidies from any new programs similar

1 to any of the above.

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

10 Sec. 207. (1) Except as otherwise provided in this section,
11 the following are exempt from the tax imposed by this act:

12 (a) The United States, this state, other states, and the
13 agencies, political subdivisions, and enterprises of the United
14 States, this state, and other states, including any grantor trust
15 established by a municipality with the municipality as the grantor
16 and exempt from federal income tax under the internal revenue code.

17 (b) A person who is exempt from federal income tax under the
18 internal revenue code, and a partnership, limited liability
19 company, joint venture, general partnership, limited partnership,
20 unincorporated association, or other group or combination of
21 entities acting as a unit if the activities of the entity are
22 exclusively related to the charitable, educational, or other
23 purpose or function that is the basis for the exemption under the
24 internal revenue code from federal income taxation of the partners
25 or members and if all of the partners or members of the entity are
26 exempt from federal income tax under the internal revenue code,
27 except the following:

1 (i) An organization included under section 501(c)(12) or
2 501(c)(16) of the internal revenue code.

3 (ii) An organization exempt under section 501(c)(4) of the
4 internal revenue code that would be exempt under section 501(c)(12)
5 of the internal revenue code except that it failed to meet the
6 requirements in section 501(c)(12) that 85% or more of its income
7 consist of amounts collected from members.

8 (iii) The tax base attributable to the activities giving rise to
9 the unrelated taxable business income of an exempt person.

10 (c) A nonprofit cooperative housing corporation. As used in
11 this subdivision, "nonprofit cooperative housing corporation" means
12 a cooperative housing corporation that is engaged in providing
13 housing services to its stockholders and members and that does not
14 pay dividends or interest on stock or membership investment but
15 that does distribute all earnings to its stockholders or members.
16 The exemption under this subdivision does not apply to a business
17 activity of a nonprofit cooperative housing corporation other than
18 providing housing services to its stockholders and members.

19 (d) That portion of the tax base attributable to the
20 production of agricultural goods by a person whose primary activity
21 is the production of agricultural goods. "Production of
22 agricultural goods" means commercial farming, including, but not
23 limited to, cultivation of the soil; growing and harvesting of an
24 agricultural, horticultural, or floricultural commodity; dairying;
25 raising of livestock, bees, fish, fur-bearing animals, or poultry;
26 or turf or tree farming, but does not include the marketing at
27 retail of agricultural goods except for sales of nursery stock

1 grown by the seller and sold to a nursery dealer licensed under
2 section 9 of the insect pest and plant disease act, 1931 PA 189,
3 MCL 286.209.

4 (e) Except as provided in subsection (2), a farmers'
5 cooperative corporation organized within the limitations of section
6 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under
7 subdivision (b) because the corporation was exempt from federal
8 income taxes under section 521 of the internal revenue code and
9 that would continue to be exempt under section 521 of the internal
10 revenue code except for either of the following activities:

11 (i) The corporation's repurchase from nonproducer customers of
12 portions or components of commodities the corporation markets to
13 those nonproducer customers and the corporation's subsequent
14 manufacturing or marketing of the repurchased portions or
15 components of the commodities.

16 (ii) The corporation's incidental or emergency purchases of
17 commodities from nonproducers to facilitate the manufacturing or
18 marketing of commodities purchased from producers.

19 (f) That portion of the tax base attributable to the direct
20 and indirect marketing activities of a farmers' cooperative
21 corporation organized within the limitations of section 98 of 1931
22 PA 327, MCL 450.98, if those marketing activities are provided on
23 behalf of the members of that corporation and are related to the
24 members' direct sales of their products to third parties or, for
25 livestock, are related to the members' direct or indirect sales of
26 that product to third parties. Marketing activities for a product
27 that is not livestock are not exempt under this subdivision if the

1 farmers' cooperative corporation takes physical possession of the
2 product. As used in this subdivision, "marketing activities" means
3 activities that include, but are not limited to, all of the
4 following:

5 (i) Activities under the agricultural commodities marketing
6 act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural
7 marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726.

8 (ii) Dissemination of market information.

9 (iii) Establishment of price and other terms of trade.

10 (iv) Promotion.

11 (v) Research relating to members' products.

12 (g) That portion of the tax base attributable to the services
13 provided by an attorney-in-fact to a reciprocal insurer pursuant to
14 chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200
15 to 500.7234.

16 (h) That portion of the tax base attributable to a multiple
17 employer welfare arrangement that provides dental benefits only and
18 that has a certificate of authority under chapter 70 of the
19 insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

20 (i) A foreign person is not subject to taxation under this act
21 if the foreign person is domiciled in a subnational jurisdiction
22 that does not impose an income tax on a similarly situated person
23 domiciled in this state whose presence in the foreign country is
24 the same as the foreign person's presence in the United States. If
25 a foreign person is domiciled in a subnational jurisdiction that
26 does not impose an income tax on businesses, but instead imposes
27 some other type of subnational business tax, that foreign person is

1 not subject to taxation under this act if that subnational business
2 tax is not imposed on a similarly situated person domiciled in this
3 state whose presence in the foreign country is the same as the
4 foreign person's presence in the United States.

5 (2) Subsection (1)(e) does not exempt a farmers' cooperative
6 corporation if the total dollar value of the farmers' cooperative
7 corporation's incidental and emergency purchases described in
8 subsection (1)(e)(ii) are equal to or greater than 5% of the
9 corporation's total purchases.

10 (3) Except as otherwise provided in this section, a farmers'
11 cooperative corporation that is structured to allocate net earnings
12 in the form of patronage dividends as defined in section 1388 of
13 the internal revenue code to its farmer or farmer cooperative
14 corporation patrons shall exclude from its adjusted tax base the
15 revenue and expenses attributable to business transacted with its
16 farmer or farmer cooperative corporation patrons.

17 (4) Notwithstanding any other provision of this act to the
18 contrary, a foreign person subject to tax under this act shall
19 calculate its business income tax base and modified gross receipts
20 tax base under this section. Except as otherwise provided in this
21 section, the business income tax base and modified gross receipts
22 tax base of a foreign person is subject to all adjustments and
23 other provisions of this act. However, neither the business income
24 tax base nor the modified gross receipts tax base shall include
25 proceeds from sales where title passes outside the United States.

26 (5) Except as otherwise provided in this section, the modified
27 gross receipts tax base of a foreign person includes the sum of

1 gross receipts and the adjustments under section 203 that are
2 related to United States business activity.

3 (6) Except as otherwise provided in this section, the business
4 income tax base of a foreign person includes the sum of business
5 income and the adjustments under section 201 that are related to
6 United States business activity.

7 (7) The sales factor for a foreign person is a fraction, the
8 numerator of which is the taxpayer's total sales in this state
9 where title passes inside the United States during the tax year and
10 the denominator of which is the taxpayer's total sales in the
11 United States where title passes inside the United States during
12 the tax year.

13 (8) As used in this section:

14 (a) "Business income" means, for a foreign person, gross
15 income attributable to the taxpayer's United States business
16 activity and gross income derived from sources within the United
17 States minus the deductions allowed under the internal revenue code
18 that are related to that gross income. Gross income includes the
19 proceeds from sales shipped or delivered to any purchaser within
20 the United States and for which title transfers within the United
21 States; proceeds from services performed within the United States;
22 and a pro rata proportion of the proceeds from services performed
23 both within and outside the United States to the extent the
24 recipient receives benefit of the services within the United
25 States.

26 (b) "Domiciled" means the location of the headquarters of the
27 trade or business from which the trade or business of the foreign

1 person is principally managed and directed.

2 (c) For subsection (1)(b), "exclusively" means that term as
3 applied for purposes of section 501(c)(3) of the internal revenue
4 code.

5 (d) "Foreign person" means either of the following:

6 (i) An individual who is not a United States resident, whether
7 or not the individual is subject to taxation under the internal
8 revenue code.

9 (ii) A person formed under the laws of a foreign country or a
10 political subdivision of a foreign country, whether or not the
11 person is subject to taxation under the internal revenue code, **AND**
12 **WHETHER OR NOT THE PERSON IS DISREGARDED PURSUANT TO THE INTERNAL**
13 **REVENUE CODE AND FEDERAL REGULATIONS.**

14 (e) "Gross receipts" means, for a foreign person, gross
15 receipts as defined in section 111(1) from United States business
16 activity or from sources within the United States. Gross receipts
17 include all sales for which title transfers within the United
18 States; proceeds from all services performed within the United
19 States; and a pro rata portion of proceeds from services performed
20 both within and outside of the United States to the extent the
21 recipient receives benefit of the services within the United
22 States.

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

25 (a) Sales of tangible personal property are in this state if
26 the property is shipped or delivered, or, in the case of
27 electricity and gas, the contract requires the property to be

1 shipped or delivered, to any purchaser within this state based on
2 the ultimate destination at the point that the property comes to
3 rest, **FOR ITS FIRST INTENDED USE**, regardless of the free on board
4 point or other conditions of the sales.

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

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

21 (d) Receipts from the lease or rental of mobile transportation
22 property owned by the taxpayer are in this state to the extent that
23 the property is used in this state. The extent an aircraft will be
24 deemed to be used in this state and the amount of receipts that is
25 to be included in the numerator of this state's sales factor is
26 determined by multiplying all the receipts from the lease or rental
27 of the aircraft by a fraction, the numerator of the fraction is the

1 number of landings of the aircraft in this state and the
2 denominator of the fraction is the total number of landings of the
3 aircraft. If the extent of the use of any transportation property
4 within this state cannot be determined, then the receipts are in
5 this state if the property has its principal base of operations in
6 this state.

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

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

24 (a) Except as otherwise provided in this section, all receipts
25 from the performance of services are included in the numerator of
26 the apportionment factor if the recipient of the services receives
27 all of the benefit of the services in this state. If the recipient

1 of the services receives some of the benefit of the services in
2 this state, the receipts are included in the numerator of the
3 apportionment factor in proportion to the extent that the recipient
4 receives benefit of the services in this state.

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

21 (c) Sales of services that are derived directly or indirectly
22 from the sale of management, distribution, administration, or
23 securities brokerage services to, or on behalf of, a regulated
24 investment company or its beneficial owners, including receipts
25 derived directly or indirectly from trustees, sponsors, or
26 participants of employee benefit plans that have accounts in a
27 regulated investment company, shall be attributable to this state

1 to the extent that the shareholders of the regulated investment
2 company are domiciled within this state. For purposes of this
3 subdivision, "domicile" means the shareholder's mailing address on
4 the records of the regulated investment company. If the regulated
5 investment company or the person providing management services to
6 the regulated investment company has actual knowledge that the
7 shareholder's primary residence or principal place of business is
8 different than the shareholder's mailing address, then the
9 shareholder's primary residence or principal place of business is
10 the shareholder's domicile. A separate computation shall be made
11 with respect to the receipts derived from each regulated investment
12 company. The total amount of sales attributable to this state shall
13 be equal to the total receipts received by each regulated
14 investment company multiplied by a fraction determined as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (e) Receipts attributable to this state of a person whose
26 business activities consist of the transportation of gas by
27 pipeline shall be proportioned based on the ratio that the gross

1 receipts for the 1,000 cubic feet miles transported in this state
2 bear to the gross receipts for the 1,000 cubic feet miles
3 transported by the person everywhere.

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

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

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

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

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

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

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

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

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

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

27 (c) 50% of the receipts from the sale of service segments for

1 a channel between 2 customer channel termination points, 1 of which
2 is located in this state and the other is located outside of this
3 state, which segments are separately charged.

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

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

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

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

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

27 (c) 100% of the receipts from interstate end user access line

1 charges, if the customer's service address is in this state. As
2 used in this subdivision, "interstate end user access line charges"
3 includes, but is not limited to, the surcharge approved by the
4 federal communications commission and levied pursuant to 47 CFR 69.

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

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

1 receipts from the advertising to that customer are included in the
2 numerator of the apportionment factor in proportion to the extent
3 that the customer receives the benefit of the advertising in this
4 state. For purposes of this subsection, if the taxpayer is a
5 broadcaster and if the customer receives some of the benefit of the
6 advertising in this state, the media receipts for that sale of
7 advertising from that customer shall be proportioned based on the
8 ratio that the broadcaster's viewing or listening audience in this
9 state bears to its total viewing or listening audience everywhere.
10 As used in this subsection:

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

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

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

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

27 (22) For purposes of this section, a borrower is considered

1 located in this state if the borrower's billing address is in this
2 state.

3 Sec. 403. (1) Notwithstanding any other provision in this act,
4 the credits provided in this section **AND SECTION 405** shall be taken
5 before any **UNUSED CARRYFORWARD ALLOWED UNDER SECTION 401 AND BEFORE**
6 **ANY** other credit under this act. Except as otherwise provided in
7 subsection (6), for the 2008 tax year, the total combined credit
8 allowed under this section shall not exceed 50% of the tax
9 liability imposed under this act before the imposition and levy of
10 the surcharge under section 281. For the 2009 tax year and each tax
11 year after 2009, the total combined credit allowed under this
12 section shall not exceed 52% of the tax liability imposed under
13 this act before the imposition and levy of the surcharge under
14 section 281.

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

1 employer organization. A client may include payments by the
2 professional employer organization to the officers and employees of
3 the client whose employment operations are managed by the
4 professional employer organization.

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

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

23 (b) Calculate the cost, including fabrication and
24 installation, paid or accrued in the taxable year of mobile
25 tangible assets of a type that are, or under the internal revenue
26 code will become, eligible for depreciation, amortization, or
27 accelerated capital cost recovery for federal income tax purposes.

1 This amount shall be multiplied by the apportionment factor for the
2 tax year as prescribed in chapter 3.

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

11 ~~(d) If the cost of tangible assets described in subdivision~~
12 ~~(a) was paid or accrued in a tax year beginning after December 31,~~
13 ~~2007, or before December 31, 2007 to~~ **TO** the extent the credit is
14 used and at the rate at which the credit was used under former 1975
15 PA 228 or this act, calculate the gross proceeds or benefit derived
16 from the sale or other disposition of the tangible assets minus the
17 gain, multiplied by the apportionment factor for the taxable year
18 as prescribed in chapter 3, and plus the loss, multiplied by the
19 apportionment factor for the taxable year as prescribed in chapter
20 3 from the sale or other disposition reflected in federal taxable
21 income and minus the gain from the sale or other disposition added
22 to the business income tax base in section 201.

23 ~~(e) If the cost of tangible assets described in subdivision~~
24 ~~(b) was paid or accrued in a tax year beginning after December 31,~~
25 ~~2007, or before December 31, 2007 to~~ **TO** the extent the credit is
26 used and at the rate at which the credit was used under former 1975
27 PA 228 or this act, calculate the gross proceeds or benefit derived

1 from the sale or other disposition of the **MOBILE** tangible assets
2 minus the gain and plus the loss from the sale or other disposition
3 reflected in federal taxable income and minus the gain from the
4 sale or other disposition added to the business income tax base in
5 section 201. This amount shall be multiplied by the apportionment
6 factor for the tax year as prescribed in chapter 3.

7 (f) ~~For assets purchased or acquired in a tax year beginning~~
8 ~~after December 31, 2007, or before December 31, 2007 to~~ **TO** the
9 extent the credit is used and at the rate at which the credit was
10 used under former 1975 PA 228 or this act, **FOR ASSETS** that were
11 eligible for a credit under subdivision (a) or (c) and that were
12 transferred out of this state, calculate the federal basis used for
13 determining gain or loss as of the date of the transfer.

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

18 (5) A taxpayer that claims a credit under this section is not
19 prohibited from claiming a credit under section 405. However, the
20 taxpayer shall not claim a credit under this section and section
21 405 based on the same costs and expenses.

22 (6) For a taxpayer primarily engaged in furnishing electric
23 and gas utility service that makes capital investments in electric
24 and gas distribution assets for which a portion of the credit
25 provided under subsection (3) would be denied for the 2008 tax year
26 by reason of the 50% limitation of subsection (1), the 50%
27 limitation on the total combined credit for the 2008 tax year

1 provided in subsection (1) shall be increased by an amount not to
2 exceed the lesser of the amount of the denied credit or 50% of the
3 tax increase under this act accrued for financial reporting
4 purposes due to the elimination of the deduction under section
5 168(k) of the internal revenue code by the amendatory act that
6 added this subsection. Provided, however, that the total combined
7 credit allowed under this section for the 2008 tax year shall not
8 exceed 80% of the tax liability imposed under this act after the
9 imposition and levy of the surcharge under section 281.

10 Sec. 405. For the 2008 tax year, a taxpayer may claim a credit
11 against the tax imposed by this act equal to 1.52% of the
12 taxpayer's research and development expenses in this state in the
13 tax year. For the 2009 tax year and each tax year after 2009, a
14 taxpayer may claim a credit against the tax imposed by this act
15 equal to 1.90% of the taxpayer's research and development expenses
16 in this state in the tax year. The credit under this section
17 combined with the total combined credit allowed under section 403
18 shall not exceed 65% of the tax liability imposed under this act
19 before the imposition and levy of the surcharge under section 281.
20 As used in this section, "research and development expenses" means
21 **QUALIFIED RESEARCH EXPENSES AS** that term ~~as~~**IS** defined in section
22 41(b) of the internal revenue code.

23 Sec. 413. (1) Subject to ~~subsection~~**SUBSECTIONS (2) AND (3)**, a
24 taxpayer may claim a credit against the tax imposed by this act
25 equal to the following:

26 (a) For property taxes levied after December 31, 2007, 35% of
27 the amount paid for property taxes on eligible personal property in

1 the tax year.

2 (b) Twenty-three percent of the amount paid for property taxes
3 levied on eligible telephone personal property in the 2008 tax year
4 and 13.5% of the amount paid for property taxes levied on eligible
5 telephone personal property in subsequent tax years.

6 (c) For property taxes levied after December 31, 2007, 10% of
7 the amount paid for property taxes on eligible natural gas pipeline
8 property in the tax year.

9 (2) To qualify for the credit under subsection (1), the
10 taxpayer shall file, if applicable, within the time prescribed each
11 of the following:

12 (a) The statement of assessable personal property prepared
13 pursuant to section 19 of the general property tax act, 1893 PA
14 206, MCL 211.19, identifying the eligible personal property or
15 eligible natural gas pipeline property, or both, for which the
16 credit under subsection (1) is claimed.

17 (b) The annual report filed under section 6 of 1905 PA 282,
18 MCL 207.6, identifying the eligible telephone personal property for
19 which the credit under subsection (1) is claimed.

20 (c) The assessment or bill issued to and paid by the taxpayer
21 for the eligible personal property, eligible natural gas pipeline
22 property, or eligible telephone property for which the credit under
23 subsection (1) is claimed.

24 **(3) IF A CREDIT WAS CLAIMED UNDER THIS SECTION IN CONNECTION**
25 **WITH PROPERTY THAT WAS CLASSIFIED BUT NOT INCLUDED AS INDUSTRIAL**
26 **PERSONAL PROPERTY UNDER SECTION 34C OF THE GENERAL PROPERTY TAX**
27 **ACT, 1893 PA 206, MCL 211.34C, BEFORE THE EFFECTIVE DATE OF THE**

1 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE CREDIT SHALL BE
2 DISALLOWED AND THE TAXPAYER SHALL HAVE AN AMOUNT EQUAL TO THE
3 CREDIT AMOUNT PREVIOUSLY CLAIMED UNDER THIS SECTION ADDED BACK TO
4 THE TAX LIABILITY OF THE TAXPAYER IN THE IMMEDIATELY SUCCEEDING TAX
5 YEAR. IF A CREDIT WAS NOT CLAIMED UNDER THIS SECTION IN CONNECTION
6 WITH PROPERTY THAT WAS INCLUDED BUT NOT CLASSIFIED AS INDUSTRIAL
7 PERSONAL PROPERTY UNDER SECTION 34C OF THE GENERAL PROPERTY TAX
8 ACT, 1893 PA 206, MCL 211.34C, BEFORE THE EFFECTIVE DATE OF THE
9 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE CREDIT SHALL BE
10 ALLOWED AND THE TAXPAYER MAY FILE AN AMENDED RETURN TO CLAIM A
11 REFUND FOR THAT CREDIT UNDER THIS SECTION TO THE EXTENT ALLOWED
12 UNDER SECTION 27A OF 1941 PA 122, MCL 205.27A.

13 (4) ~~(3)~~—If the amount of the credit allowed under this section
14 exceeds the tax liability of the taxpayer for the tax year, that
15 excess shall be refunded.

16 (5) ~~(4)~~—As used in this section:

17 (a) "Eligible natural gas pipeline property" means natural gas
18 pipelines that are classified as utility personal property under
19 section 34c of the general property tax act, 1893 PA 206, MCL
20 211.34c, and are subject to regulation under the natural gas act,
21 15 USC 717 to 717z.

22 (b) "Eligible personal property" means personal property that
23 is ~~classified~~ **INCLUDED** as industrial personal property under
24 section 34c of the general property tax act, 1893 PA 206, MCL
25 211.34c. ~~, or in the case of personal property that is subject to~~
26 ~~1974 PA 198, MCL 207.551 to 207.572, is situated on land classified~~
27 ~~as industrial real property under section 34c of the general~~

1 ~~property tax act, 1893 PA 206, MCL 211.34c.~~

2 (c) "Eligible telephone personal property" means personal
3 property of a telephone company subject to the tax levied under
4 1905 PA 282, MCL 207.1 to 207.21.

5 (d) "Property taxes" means any of the following:

6 (i) Taxes collected under the general property tax act, 1893 PA
7 206, MCL 211.1 to 211.155.

8 (ii) Taxes levied under 1974 PA 198, MCL 207.551 to 207.572.

9 (iii) Taxes levied under the obsolete property rehabilitation
10 act, 2000 PA 146, MCL 125.2781 to 125.2797.

11 (iv) Taxes levied under 1905 PA 282, MCL 207.1 to 207.21.

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

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

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

24 (ii) ~~(b)~~—Ten percent of adjusted services performed in a
25 designated renaissance zone.

26 **(B) ~~(c)~~**—For a taxpayer located and conducting business
27 activity in a renaissance zone before December ~~31-1~~, 2002, ~~the A~~

1 CREDIT EQUAL TO THE GREATER OF THE FOLLOWING:

2 (i) THE AMOUNT CALCULATED UNDER SUBDIVISION (A) (i) OR (ii),
3 WHICHEVER IS LESS.

4 (ii) THE product of the following:

5 (A) ~~(i)~~—The credit claimed under section 39b of former 1975 PA
6 228 for the tax year ending in 2007.

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

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

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

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

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

23 (5) A taxpayer that claims a credit under this section shall
24 not employ, pay a speaker fee to, or provide any remuneration,
25 compensation, or consideration to any person employed by the state,
26 the state administrative board created in 1921 PA 2, MCL 17.1 to
27 17.3, or the renaissance zone review board created in **SECTION 5 OF**

1 **THE RENAISSANCE ZONE ACT**, 1996 PA 376, MCL ~~125.2681 to 125.2696~~
2 **125.2685**, whose employment relates or related in any way to the
3 authorization or enforcement of the credit allowed under this
4 section for any year in which the taxpayer claims a credit under
5 this section and for the 3 years after the last year that a credit
6 is claimed.

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

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

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

19 (9) As used in this section:

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

22 (i) Except as provided in subparagraph (ii), the sum of the
23 taxpayer's payroll for services performed in a designated
24 renaissance zone plus an amount equal to the amount deducted in
25 arriving at federal taxable income for the tax year for
26 depreciation, amortization, or immediate or accelerated write-off
27 for tangible property exempt under section 7ff of the general

1 property tax act, 1893 PA 206, MCL 211.7ff, in the tax year or, for
2 new property, in the immediately following tax year.

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

7 (A) Business income.

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

11 (C) The renaissance zone business activity factor.

12 (b) "Casino" means a casino regulated by this state pursuant
13 to the Michigan gaming control and revenue act, 1996 IL 1, MCL
14 432.201 to 432.226.

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

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

23 (e) "Renaissance zone" means that term as defined in the
24 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
25 125.2696.

26 (f) "Renaissance zone business activity factor" means a
27 fraction, the numerator of which is the ratio of the average value

1 of the taxpayer's property located in a designated renaissance zone
2 to the average value of the taxpayer's property in this state plus
3 the ratio of the taxpayer's payroll for services performed in a
4 designated renaissance zone to all of the taxpayer's payroll in
5 this state and the denominator of which is 2.

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

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

18 (2) If a taxpayer has apportioned or allocated gross receipts
19 for a tax year of less than 12 months, the amount in subsection (1)
20 shall be multiplied by a fraction, the numerator of which is the
21 number of months in the tax year and the denominator of which is
22 12.

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

1 application payment of the estimated tax liability unpaid for the
2 tax period covered by the extension.

3 (4) If a taxpayer is granted an extension of time within which
4 to file the federal income tax return for any tax year, the filing
5 of a copy of the request for extension together with a tentative
6 return and payment of an estimated tax with the department by the
7 due date provided in subsection (1) shall automatically extend the
8 due date for the filing of an annual or final return under this act
9 until the last day of the eighth month following the original due
10 date of the return. Interest at the rate under section 23(2) of
11 1941 PA 122, MCL 205.23, shall be added to the amount of the tax
12 unpaid for the period of the extension.

13 Sec. 511. A unitary business group shall file a combined
14 return that includes each United States person, other than a
15 foreign operating entity, that is included in the unitary business
16 group. Each United States person included in a unitary business
17 group or included in a combined return shall be treated as a single
18 person and all transactions between those persons included in the
19 unitary business group shall be eliminated from the business income
20 tax base, modified gross receipts tax base, and **FOR PURPOSES OF THE**
21 **EXEMPTIONS, DEDUCTIONS, SUBTRACTIONS, OR CREDITS**, the apportionment
22 formula **AND FOR DETERMINING THE FILING THRESHOLD** under this act. If
23 a United States person included in a unitary business group or
24 included in a combined return is subject to the tax under chapter
25 2A or 2B, any business income attributable to that person shall be
26 eliminated from the business income tax base, any modified gross
27 receipts attributable to that person shall be eliminated from the

1 modified gross receipts tax base, and any sales attributable to
2 that person shall be eliminated from the apportionment formula
3 under this act.

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