

SENATE BILL No. 361

March 11, 2009, Introduced by Senators GILBERT, JANSEN, RICHARDVILLE, SANBORN, THOMAS, BARCIA and KUIPERS and referred to the Committee on Finance.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 111 (MCL 208.1111), as amended by 2008 PA 433.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 111. (1) "Gross receipts" means the entire amount
2 received by the taxpayer as determined by using the taxpayer's
3 method of accounting used for federal income tax purposes, less any
4 amount deducted as bad debt for federal income tax purposes that
5 corresponds to items of gross receipts included in the modified
6 gross receipts tax base for the current tax year or a past tax year
7 phased in over a 5-year period starting with 50% of that amount in
8 the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax
9 year, 75% in the 2011 tax year, and 100% in the 2012 tax year and

1 each tax year thereafter, from any activity whether in intrastate,
2 interstate, or foreign commerce carried on for direct or indirect
3 gain, benefit, or advantage to the taxpayer or to others except for
4 the following:

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

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

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

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

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

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

26 (v) Property not described under subparagraph (iv) that is
27 purchased by the taxpayer on behalf of the principal and that the

1 taxpayer does not take title to or use in the course of performing
2 its contractual business activities.

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

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

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

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

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

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

1 (h) Proceeds from any of the following:

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

5 (ii) The original issue of debt instruments.

6 (i) Refunds from returned merchandise.

7 (j) Cash and in-kind discounts.

8 (k) Trade discounts.

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

10 (m) Security deposits.

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

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

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

20 (i) The property is a capital asset as defined in section
21 1221(a) of the internal revenue code.

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

25 (iii) The property is used in a hedging transaction entered into
26 by the taxpayer in the normal course of the taxpayer's trade or
27 business primarily to manage the risk of exposure to foreign

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

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

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

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

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

25 (t) For a mortgage company, proceeds representing the
26 principal balance of loans transferred or sold in the tax year. For
27 purposes of this subdivision, "mortgage company" means a person

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

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

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

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

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

25 (A) Receipts from tangible and intangible property if the
26 acquisition, rental, lease, management, or disposition of the
27 property constitutes integral parts of the taxpayer's regular trade

1 or business operations.

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

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

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

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

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

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

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

24 (x) Receipts derived from investment activity by a person that
25 is organized exclusively to conduct investment activity and that
26 does not conduct investment activity for any person other than an
27 individual or a person related to that individual or by a common

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

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

13 (z) Dividends and royalties received or deemed received from a
14 foreign operating entity or a person other than a United States
15 person, including, but not limited to, the amounts determined under
16 section 78 of the internal revenue code and sections 951 to 964 of
17 the internal revenue code, 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 (aa) To the extent not deducted as purchases from other firms
22 under section 203, each of the following:

23 (i) Sales or use taxes collected from or reimbursed by a
24 consumer or other taxes the taxpayer collected directly from or was
25 reimbursed by a purchaser and remitted to a local, state, or
26 federal tax authority, phased in over a 5-year period starting with
27 50% of that amount in the 2008 tax year, 60% in the 2009 tax year,

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

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

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

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

1 year, and 100% in the 2012 tax year and each tax year thereafter.

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

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

24 (vii) Any deposit required under any of the following, phased
25 in over a 5-year period starting with 50% of that amount in the
26 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year,
27 75% in the 2011 tax year, and 100% in the 2012 tax year and each

1 tax year thereafter:

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

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

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

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

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

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

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

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

27 (iii) "Real estate investment trust" means that term as defined

1 under section 856 of the internal revenue code.

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

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

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

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

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

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

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

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

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

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

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

27 (i) "Broker" means that term as defined under section 78c(a)(4)

1 of the securities exchange act of 1934, 15 USC 78c.

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

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

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

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

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

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

14 (a) The chairperson of the board.

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

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

19 Enacting section 1. This amendatory act is retroactive and
20 effective for tax years that begin after December 31, 2007.