

**SUBSTITUTE FOR  
SENATE BILL NO. 95**

A bill to provide for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of an income tax on certain commercial, business, and financial activities; to prescribe the powers and duties of certain public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; and to provide for the interrelation of this act with other acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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CHAPTER 1

Sec. 1. This act shall be known and may be cited as the "business income tax act".

Sec. 2. (1) For the purposes of this act, the words and

1 phrases defined in sections 3 through 9 shall have the meanings  
2 respectively ascribed to them in those sections.

3 (2) A term used in this act and not defined differently shall  
4 have the same meaning as when used in comparable context in the  
5 laws of the United States relating to federal income taxes in  
6 effect for the tax year unless a different meaning is clearly  
7 required. A reference in this act to the internal revenue code  
8 includes other provisions of the laws of the United States relating  
9 to federal income taxes.

10 Sec. 3. (1) "Affiliated group" means 2 or more United States  
11 corporations, 1 of which owns or controls, directly or indirectly,  
12 80% or more of the capital stock with voting rights of the other  
13 United States corporation or United States corporations. As used in  
14 this subsection, "United States corporation" means a domestic  
15 corporation as that term is defined in section 7701(a)(3) and (4)  
16 of the internal revenue code.

17 (2) "Business activity" means a transfer of legal or equitable  
18 title to or rental of property, whether real, personal, or mixed,  
19 tangible or intangible, or the performance of services, or a  
20 combination thereof, made or engaged in, or caused to be made or  
21 engaged in, within this state, whether in intrastate, interstate,  
22 or foreign commerce, with the object of gain, benefit, or  
23 advantage, whether direct or indirect, to the taxpayer or to  
24 others, but shall not include the services rendered by an employee  
25 to his or her employer, services as a director of a corporation, or  
26 a casual transaction. Although an activity of a taxpayer may be  
27 incidental to another or others of his or her business activities,

1 each activity shall be considered to be business engaged in within  
2 the meaning of this act.

3 (3) Except as otherwise provided in section 22, "business  
4 income" means that part of federal taxable income derived from  
5 business activity. For a partnership or S corporation, business  
6 income includes payments and items of income and expense that are  
7 attributable to business activity of the partnership or subchapter  
8 S corporation and separately reported to the partners or  
9 shareholders.

10 Sec. 4. (1) "Casual transaction" means a transaction made or  
11 engaged in other than in the ordinary course of repeated and  
12 successive transactions of a like character, except that a  
13 transaction made or engaged in by a person that is incidental to  
14 that person's regular business activity is a business activity  
15 within the meaning of this act.

16 (2) "Commercial domicile" means the principal place from which  
17 the business activity of the taxpayer is directed or managed.

18 (3) "Corporation" means a person that is a corporation under  
19 the internal revenue code.

20 (4) "Department" means the department of treasury.

21 Sec. 5. (1) "Employee" means an employee as defined in section  
22 3401(c) of the internal revenue code. A person from whom an  
23 employer is required to withhold for federal income tax purposes is  
24 prima facie considered an employee.

25 (2) "Employer" means an employer as defined in section 3401(d)  
26 of the internal revenue code. A person required to withhold for  
27 federal income tax purposes is prima facie considered an employer.

1           (3) "Federal taxable income" means taxable income as defined  
2 in section 63 of the internal revenue code.

3           (4) "Financial organization" means a bank, industrial bank,  
4 trust company, building and loan or savings and loan association,  
5 bank holding company as defined in 12 USC 1841, credit union,  
6 safety and collateral deposit company, regulated investment company  
7 as defined in the internal revenue code, or any other association,  
8 joint stock company, or corporation at least 90% of whose assets  
9 consist of intangible personal property and at least 90% of whose  
10 gross receipts income consists of dividends or interest or other  
11 charges resulting from the use of money or credit.

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

13           (a) An individual who is not a United States resident, whether  
14 or not the individual is subject to taxation under the internal  
15 revenue code.

16           (b) A person formed under the laws of a foreign country or a  
17 political subdivision of a foreign country, whether or not the  
18 person is subject to taxation under the internal revenue code.

19           Sec. 6. (1) "Gross receipts" means the entire amount received  
20 by the taxpayer from any activity whether in intrastate,  
21 interstate, or foreign commerce carried on for direct or indirect  
22 gain, benefit, or advantage to the taxpayer or to others except for  
23 the following:

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

27           (b) Amounts received by the taxpayer as an agent solely on

1 behalf of the principal that are expended by the taxpayer for any  
2 of the following:

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

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

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

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

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

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

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

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

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

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

15 (g) Proceeds from any of the following:

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

17 (ii) The original issue of debt instruments.

18 (h) Refunds from returned merchandise.

19 (i) Cash and in-kind discounts.

20 (j) Trade discounts.

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

22 (l) Security deposits.

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

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

25 (o) Proceeds from a sale, transaction, exchange, involuntary  
26 conversion, or other disposition of tangible, intangible, or real  
27 property that is a capital asset as defined in section 1221(a) of

1 the internal revenue code or land that qualifies as property used  
2 in the trade or business as defined in section 1231(b) of the  
3 internal revenue code, less any gain from the disposition to the  
4 extent that gain is included in federal taxable income.

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

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

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

14 (4) "Nonbusiness income" means all income from casual  
15 transactions and all income other than business income. For a tax-  
16 exempt person, nonbusiness income means all income derived from  
17 unrelated business activity other than business income.

18 Sec. 7. (1) "Person" means an individual, firm, bank,  
19 financial institution, limited partnership, limited liability  
20 partnership, co-partnership, partnership, joint venture,  
21 association, corporation, subchapter S corporation, limited  
22 liability company, receiver, estate, trust, or any other group or  
23 combination of groups acting as a unit.

24 (2) "Rent" includes a lease payment or other payment for the  
25 use of any property to which the taxpayer does not have legal or  
26 equitable title.

27 (3) "Revenue mile" means the transportation for a

1 consideration of 1 net ton in weight or 1 passenger the distance of  
2 1 mile.

3 Sec. 8. (1) "Subchapter S corporation" means a corporation for  
4 which there is in effect an election under section 1362 of the  
5 internal revenue code, or for which there is a federal election to  
6 opt out of the provisions of the subchapter S revision act of 1982,  
7 Public Law 97-354, and have applied instead the prior federal  
8 subchapter S rules as in effect on July 1, 1982.

9 (2) "Sale" or "sales" means the amounts received by the  
10 taxpayer as consideration from the following:

11 (a) The transfer of title to, or possession of, property that  
12 is stock in trade or other property of a kind that would properly  
13 be included in the inventory of the taxpayer if on hand at the  
14 close of the tax period or property held by the taxpayer primarily  
15 for sale to customers in the ordinary course of the taxpayer's  
16 trade or business.

17 (b) The performance of services that constitute business  
18 activities other than those included in subdivision (a), or any  
19 combination of business activities described in this subdivision  
20 and subdivision (a).

21 (c) The rental, lease, licensing, or use of tangible or  
22 intangible property that constitutes business activity.

23 (d) Sale or sales do not include dividends, interest, and  
24 royalties except to the extent earned in the ordinary course of  
25 business activity.

26 (3) "State" means any state of the United States, the District  
27 of Columbia, the Commonwealth of Puerto Rico, any territory or

1 possession of the United States, and any foreign country, or a  
2 political subdivision of any of the foregoing.

3 Sec. 9. (1) "Tax" means the tax imposed under this act,  
4 including interest and penalties under this act, unless the term is  
5 given a more limited meaning in the context of this act or a  
6 provision of this act.

7 (2) "Tax base" means a person's business income subject to the  
8 adjustments in subdivisions (a) through (e), before allocation or  
9 apportionment, and the adjustments in subdivisions (f) through (h)  
10 after allocation or apportionment:

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

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

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

22 (d) To the extent included in federal taxable income, deduct  
23 dividends and royalties received from foreign persons, including,  
24 but not limited to, amounts determined under section 78 or sections  
25 951 to 964 of the internal revenue code.

26 (e) To the extent included in federal taxable income, add the  
27 loss or subtract the income from the business income tax base that

1 is attributable to another entity whose business activities are  
2 taxable under this chapter or would be subject to the tax under  
3 this chapter if the business activities were in this state.

4 (f) Adjust for any nonbusiness income or loss allocated to  
5 this state.

6 (g) Deduct from the allocated or apportioned business income  
7 tax base any remaining business loss carryforward calculated under  
8 section 23b(h) of former 1975 PA 228 to the extent not deducted in  
9 tax years beginning before January 1, 2008. A carryforward may be  
10 deducted in any tax year that is not more than 10 taxable years  
11 after the loss year.

12 (h) Deduct any available business loss. As used in this  
13 subsection, "business loss" means a negative business income  
14 taxable amount after allocation or apportionment. The business loss  
15 shall be carried forward to the year immediately succeeding the  
16 loss year as an offset to the allocated or apportioned business  
17 income tax base, then successively to the next 19 taxable years  
18 following the loss year or until the loss is used up, whichever  
19 occurs first, but for not more than 20 taxable years after the loss  
20 year.

21 (3) "Tax year" or "taxable year" means the calendar year, or  
22 the fiscal year ending during the calendar year, upon the basis of  
23 which the tax base of a taxpayer is computed under this act. If a  
24 return is made for a fractional part of a year, tax year means the  
25 period for which the return is made. Except for the first return  
26 required by this act, a taxpayer's tax year is for the same period  
27 as is covered by its federal income tax return. A person that has a

1 52- or 53-week tax year beginning not more than 7 days before  
2 December 31 of any year is considered to have a tax year beginning  
3 after December of that tax year.

4 (4) "Taxpayer" means a person liable for a tax, interest, or  
5 penalty under this act.

6 (5) "Unrelated business activity" means business activity  
7 directly connected with an unrelated trade or business as defined  
8 in section 513 of the internal revenue code.

9 CHAPTER 2

10 Sec. 20. (1) Except as otherwise provided in this act, there  
11 is levied and imposed a business income tax on the tax base of  
12 every person with business activity and nexus within this state  
13 unless prohibited by 15 USC 381 to 384. The business income tax is  
14 imposed on the tax base, after allocation or apportionment to this  
15 state, at the rate of 1.5%.

16 (2) A person with gross receipts equal to or less than  
17 \$350,000.00 shall have no business income tax liability and no  
18 filing requirement.

19 (3) A person with gross receipts of more than \$350,000.00 but  
20 not more than \$15,000,000.00 or that amount as annually adjusted  
21 for inflation using the Detroit consumer price index that elects  
22 under section 13 of the business and economic stimulus tax act to  
23 calculate its tax liability under the business and economic  
24 stimulus tax act is exempt from the tax imposed by this act for as  
25 long as the person remains eligible for that election.

26 Sec. 21. (1) The following are exempt from the tax imposed by  
27 this act:

1 (a) The United States, this state, other states, and the  
2 agencies, political subdivisions, and enterprises of the United  
3 States, this state, and other states.

4 (b) A person who is exempt from federal income tax under the  
5 internal revenue code, and a partnership, limited liability  
6 company, joint venture, general partnership, limited partnership,  
7 unincorporated association, or other group or combination of  
8 entities acting as a unit if the activities of the entity are  
9 exclusively related to the charitable, educational, or other  
10 purpose or function that is the basis for the exemption under the  
11 internal revenue code from federal income taxation of the partners  
12 or members and if all of the partners or members of the entity are  
13 exempt from federal income tax under the internal revenue code,  
14 except the following:

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

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

22 (iii) The adjusted tax base attributable to the activities  
23 giving rise to the unrelated taxable business income of an exempt  
24 person.

25 (c) A nonprofit cooperative housing corporation. As used in  
26 this subdivision, "nonprofit cooperative housing corporation" means  
27 a cooperative housing corporation that is engaged in providing

1 housing services to its stockholders and members and that does not  
2 pay dividends or interest on stock or membership investment but  
3 that does distribute all earnings to its stockholders or members.  
4 The exemption under this subdivision does not apply to a business  
5 activity of a nonprofit cooperative housing corporation other than  
6 providing housing services to its stockholders and members.

7 (d) That portion of the tax base attributable to the  
8 production of agricultural goods by a person whose primary activity  
9 is the production of agricultural goods. "Production of  
10 agricultural goods" means commercial farming, including, but not  
11 limited to, cultivation of the soil; growing and harvesting of an  
12 agricultural, horticultural, or floricultural commodity; dairying;  
13 raising of livestock, bees, fish, fur-bearing animals, or poultry;  
14 or turf or tree farming, but does not include the marketing at  
15 retail of agricultural goods except for sales of nursery stock  
16 grown by the seller and sold to a nursery dealer licensed under  
17 section 9 of the insect pest and plant disease act, 1931 PA 189,  
18 MCL 286.209.

19 (e) Except as provided in subsection (2), a farmers'  
20 cooperative corporation organized within the limitations of section  
21 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under  
22 subdivision (b) because the corporation was exempt from federal  
23 income taxes under section 521 of the internal revenue code and  
24 that would continue to be exempt under section 521 of the internal  
25 revenue code except for either of the following activities:

26 (i) The corporation's repurchase from nonproducer customers of  
27 portions or components of commodities the corporation markets to

1 those nonproducer customers and the corporation's subsequent  
2 manufacturing or marketing of the repurchased portions or  
3 components of the commodities.

4 (ii) The corporation's incidental or emergency purchases of  
5 commodities from nonproducers to facilitate the manufacturing or  
6 marketing of commodities purchased from producers.

7 (f) That portion of the tax base attributable to the direct  
8 and indirect marketing activities of a farmers' cooperative  
9 corporation organized within the limitations of section 98 of 1931  
10 PA 327, MCL 450.98, if those marketing activities are provided on  
11 behalf of the members of that corporation and are related to the  
12 members' direct sales of their products to third parties or, for  
13 livestock, are related to the members' direct or indirect sales of  
14 that product to third parties. Marketing activities for a product  
15 that is not livestock are not exempt under this subdivision if the  
16 farmers' cooperative corporation takes physical possession of the  
17 product. As used in this subdivision, "marketing activities" means  
18 activities that include, but are not limited to, all of the  
19 following:

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

23 (ii) Dissemination of market information.

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

25 (iv) Promotion.

26 (v) Research relating to members' products.

27 (g) That portion of the tax base attributable to the services

1 provided by an attorney-in-fact to a reciprocal insurer pursuant to  
2 chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200  
3 to 500.7234.

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

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

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

20 (4) As used in subsection (1)(b), "exclusively" means that  
21 term as applied for purposes of section 501(c)(3) of the internal  
22 revenue code.

23 Sec. 22. (1) A foreign person shall calculate business income  
24 under this section and, except as otherwise provided in this  
25 section, the tax base of a foreign person is subject to all  
26 adjustments and other provisions of this act.

27 (2) Except as otherwise provided in this section, the tax base

1 of a foreign person includes the sum of business income and the  
2 adjustments under section 9(2) that are related to United States  
3 business activity, whether or not the foreign person is subject to  
4 taxation under the internal revenue code.

5 (3) To calculate business income and the adjustments under  
6 section 9(2) that are related to United States business activity, a  
7 foreign person that does not have a permanent establishment in the  
8 United States during the tax year or that is not subject to  
9 taxation under the internal revenue code for the tax year may use  
10 amounts that reasonably approximate the federal taxable income and  
11 the permitted deductions the person would have had had the person  
12 been subject to the internal revenue code, provided the foreign  
13 person does not in the ordinary course of its business maintain tax  
14 or financial accounting records in accordance with the tax  
15 accounting requirements of the internal revenue code. The tax base  
16 of a foreign person described in this subsection shall not include  
17 gross income from sales shipped or delivered to any purchaser  
18 within the United States and for which title transfers outside the  
19 United States.

20 (4) To calculate business income and the adjustments under  
21 section 9(2) that are related to United States business activity, a  
22 Canadian person that is subject to Canadian federal income tax  
23 under the income tax act (RSC 1985, c. 1 (5th Supp)) may use  
24 amounts properly calculated under the income tax act (RSC 1985, c.  
25 1 (5th Supp)) to reasonably approximate business income and the  
26 adjustments under section 9(2) that are related to United States  
27 business activity. Amounts calculated under this subsection are

1 presumed to reasonably approximate business income and the  
2 adjustments under section 9(2) that are related to United States  
3 business activity. The tax base of a Canadian person shall not  
4 include gross income from sales shipped or delivered to any  
5 purchaser within the United States and for which title transfers  
6 outside the United States. As used in this subsection, "Canadian  
7 person" means a foreign person that does not have a permanent  
8 establishment in the United States during the tax year or that is  
9 not subject to taxation under the internal revenue code for the tax  
10 year and is either of the following:

11 (a) An entity formed under the laws of Canada or a province of  
12 Canada.

13 (b) An individual who is physically present in Canada in the  
14 aggregate exceeding 182 days in the tax year.

15 (5) As used in this section:

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

27 (b) "Permanent establishment" means either of the following:



1           (iii) The extent of utilization of tangible personal property in  
2 this state is determined by multiplying the rents and royalties by  
3 a fraction, the numerator of the fraction is the number of days of  
4 physical location of the property in this state during the rental  
5 or royalty period in the taxable year and the denominator of the  
6 fraction is the number of days of physical location of the property  
7 everywhere during all rental or royalty periods in the taxable  
8 year. If the physical location of the property during the rental or  
9 royalty period is unknown or unascertainable by the taxpayer,  
10 tangible personal property is utilized in the state in which the  
11 property was located at the time the rental or royalty payer  
12 obtained possession.

13           (c) A capital gain or loss from the sale of real property  
14 located in this state is allocable to this state.

15           (d) A capital gain or loss from sales of tangible personal  
16 property is allocable to this state if the property had a situs in  
17 this state at the time of the sale or if the taxpayer's commercial  
18 domicile is in this state and the taxpayer is not taxable in the  
19 state in which the property had a situs.

20           (e) A capital gain or loss from the sale of intangible  
21 personal property is allocable to this state if the taxpayer's  
22 commercial domicile is in this state.

23           (f) Interest and dividends are allocable to this state if the  
24 taxpayer's commercial domicile is in this state.

25           (g) Patent and copyright royalties are allocable to this state  
26 if the patent or copyright is utilized by the payer in this state  
27 or if the patent or copyright is utilized by the payer in a state

1 in which the taxpayer is not taxable and the taxpayer's commercial  
2 domicile is in this state. A patent is utilized in a state to the  
3 extent that it is employed in production, fabrication,  
4 manufacturing, or other processing in that state or to the extent  
5 that a patented product is produced in that state. If the basis of  
6 receipts from patent royalties does not permit allocation to 1 or  
7 more states or if the accounting procedures do not reflect 1 or  
8 more states of utilization, the patent shall be considered utilized  
9 in the state in which the taxpayer's commercial domicile is  
10 located.

11 (h) A copyright is utilized in a state to the extent that  
12 printing or other publication originates in that state. If the  
13 basis of receipts from copyright royalties does not permit  
14 allocation to 1 or more states or if the accounting procedures do  
15 not reflect 1 or more states of utilization, the copyright shall be  
16 considered utilized in the state in which the taxpayer's commercial  
17 domicile is located.

18 (i) Any other item of nonbusiness income is allocated to this  
19 state if the taxpayer's commercial domicile is in this state.

20 Sec. 41. The tax base of a taxpayer whose business activities  
21 are taxable both within and outside of this state is taxable in  
22 another state in either of the following circumstances:

23 (a) The taxpayer is subject to a business privilege tax, a net  
24 income tax, a franchise tax measured by net income, a franchise tax  
25 for the privilege of doing business, or a corporate stock tax or a  
26 tax of the type imposed under this act in that state.

27 (b) That state has jurisdiction to subject the taxpayer to 1

1 or more of the taxes listed in subdivision (a) regardless of  
2 whether that state does or does not subject the taxpayer to that  
3 tax.

4 Sec. 42. All of the tax base, other than the tax base of a  
5 financial organization or the tax base derived principally from  
6 transportation services or specifically allocated, shall be  
7 apportioned to this state by multiplying the tax base by the sales  
8 factor calculated under section 43.

9 Sec. 43. (1) Except as otherwise provided in this section and  
10 in section 50, the sales factor is a fraction, the numerator of  
11 which is the total sales of the taxpayer in this state during the  
12 tax year and the denominator of which is the total sales of the  
13 taxpayer everywhere during the tax year.

14 (2) The sales factor for a foreign person is a fraction, the  
15 numerator of which is the total sales of the taxpayer in this state  
16 during the tax year and the denominator of which is the total sales  
17 of the taxpayer in the United States during the tax year.

18 Sec. 44. Total sales of the taxpayer in this state are  
19 determined as follows:

20 (a) A sale of tangible personal property is in this state if  
21 the property is shipped or delivered to any purchaser within this  
22 state regardless of the free on board point or other conditions of  
23 the sale.

24 (b) Receipts from the rent, lease, or sublease of real  
25 property owned by the taxpayer are in this state if the property is  
26 located within this state.

27 (c) Receipts from the lease or rental of tangible personal

1 property are sales in this state to the extent that the property is  
2 utilized in this state. The extent of utilization of tangible  
3 personal property in this state is determined by multiplying the  
4 receipts by a fraction, the numerator of which is the number of  
5 days of physical location of the property in this state during the  
6 lease or rental period in the tax year and the denominator of which  
7 is the number of days of physical location of the property  
8 everywhere during all lease or rental periods in the tax year. If  
9 the physical location of the property during the lease or rental  
10 period is unknown or unascertainable by the taxpayer, the tangible  
11 personal property is utilized in the state in which the property  
12 was located at the time the lease or rental payer obtained  
13 possession.

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

1           Sec. 45. (1) Except as otherwise provided under section 46,  
2 sales from the performance of services are in this state if the  
3 receipts are derived from customers within this state or if the  
4 receipts are otherwise attributable to this state's marketplace.

5           (2) The following shall be used to determine the amount of  
6 sales from the performance of services that are attributable to  
7 this state:

8           (a) Except as otherwise provided in this section, all receipts  
9 from the performance of services are included in the numerator of  
10 the apportionment factor if the recipient of the services receives  
11 all of the benefit of the services in this state. If the recipient  
12 of the services receives some of the benefit of the services in  
13 this state, the receipts are included in the numerator of the  
14 apportionment factor in proportion to the extent that the recipient  
15 receives benefit of the services in this state.

16           (b) Sales derived from securities brokerage services  
17 attributable to this state are determined by multiplying the total  
18 dollar amount of receipts from securities brokerage services by a  
19 fraction, the numerator of which is the sales of securities  
20 brokerage services to customers within this state, and the  
21 denominator of which is the sales of securities brokerage services  
22 to all customers. Receipts from securities brokerage services  
23 include commissions on transactions, the spread earned on principal  
24 transactions in which the broker buys or sells from its account,  
25 total margin interest paid on behalf of brokerage accounts owned by  
26 the broker's customers, and fees and receipts of all kinds from the  
27 underwriting of securities. If receipts from brokerage services can

1 be associated with a particular customer, but it is impractical to  
2 associate the receipts with the address of the customer, then the  
3 address of the customer shall be presumed to be the address of the  
4 branch office that generates the transactions for the customer.

5 (c) Sales of services that are derived directly or indirectly  
6 from the sale of management, distribution, administration, or  
7 securities brokerage services to, or on behalf of, a regulated  
8 investment company or its beneficial owners, including receipts  
9 derived directly or indirectly from trustees, sponsors, or  
10 participants of employee benefit plans that have accounts in a  
11 regulated investment company, shall be attributable to this state  
12 to the extent that the shareholders of the regulated investment  
13 company are domiciled within this state. For purposes of this  
14 subdivision, "domicile" means the shareholder's mailing address on  
15 the records of the regulated investment company. If the regulated  
16 investment company or the person providing management services to  
17 the regulated investment company has actual knowledge that the  
18 shareholder's primary residence or principal place of business is  
19 different than the shareholder's mailing address, then the  
20 shareholder's primary residence or principal place of business is  
21 the shareholder's domicile. A separate computation shall be made  
22 with respect to the receipts derived from each regulated investment  
23 company. The total amount of sales attributable to this state shall  
24 be equal to the total receipts received by each regulated  
25 investment company multiplied by a fraction determined as follows:

26 (i) The numerator of the fraction is the average of the sum of  
27 the beginning-of-year and end-of-year number of shares owned by the

1 regulated investment company shareholders who have their domicile  
2 in this state.

3 (ii) The denominator of the fraction is the average of the sum  
4 of the beginning-of-year and end-of-year number of shares owned by  
5 all shareholders.

6 (iii) For purposes of the fraction, the year shall be the tax  
7 year of the regulated investment company that ends with or within  
8 the tax year of the taxpayer.

9 (d) Sales in this state shall include royalty or other  
10 receipts for the use of, or for the privilege of using, intangible  
11 property, including patents, know-how, formulas, designs,  
12 processes, patterns, copyrights, trade names, service names,  
13 franchises, licenses, contracts, customer lists, or similar items  
14 if such sales are from activities that constitute the taxpayer's  
15 regular trade or business. Except as otherwise provided in this  
16 section, such sales must be attributed to the state in which the  
17 property is used by the purchaser. If the property is used in more  
18 than 1 state, then the royalties or other income shall be  
19 apportioned to this state pro rata according to the portion of use  
20 in this state. Intangible property is used in this state if the  
21 purchaser uses the intangible property or the rights of the  
22 intangible property in this state.

23 (e) The taxpayer shall expend a reasonable amount of effort to  
24 obtain the information necessary to determine the amount of sales  
25 that are attributable to this state. If that information is not  
26 available, the taxpayer may use another reasonable method to  
27 determine the amount of sales attributable to this state.

1 (3) As used in this section:

2 (a) "Billing address" means the location indicated in the  
3 books and records of the taxpayer as the address of record where  
4 any notice, statement, or bill relating to a customer's account is  
5 mailed.

6 (b) "Customers within this state" means either of the  
7 following:

8 (i) A customer that is engaged in a trade or business and  
9 maintains a regular place of business within this state.

10 (ii) A customer that is not engaged in a trade or business  
11 whose billing address is in this state.

12 (c) "Regular place of business" means an office, factory,  
13 warehouse, or other business location at which the customer  
14 conducts business in a regular and systematic manner and that is  
15 continuously maintained, occupied, and used by employees, agents,  
16 or representatives of the customer.

17 Sec. 46. (1) Interest from loans secured by real property is  
18 in this state if the property is located within this state or if  
19 the property is located both within this state and 1 or more other  
20 states, if more than 50% of the fair market value of the real  
21 property is located within this state, or if more than 50% of the  
22 fair market value of the real property is not located within any 1  
23 state, if the borrower is located in this state. The determination  
24 of whether the real property securing a loan is located within this  
25 state shall be made as of the time the original agreement was made  
26 and any and all subsequent substitutions of collateral shall be  
27 disregarded.

1           (2) Interest from loans not secured by real property is in  
2 this state if the borrower is located in this state.

3           (3) Receipts from the sale of loans or a group of loans,  
4 including income recorded under the coupon stripping rules of  
5 section 1286 of the internal revenue code, are in this state as  
6 follows:

7           (a) The amount of receipts from the sale of loans secured by  
8 real property is in this state if the property is in this state or  
9 the property is located both within this state and 1 or more other  
10 states and 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 in any 1  
13 state, then if the borrower is located in this state.

14           (b) The amount of receipts from the sale of loans not secured  
15 by real property is in this state if the borrower is in this state.

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

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

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

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

16 (7) Interest, dividends, and other income from investment  
17 assets and activities and from trading assets and activities,  
18 including, but not limited to, investment securities; trading  
19 account assets; federal funds; securities purchased and sold under  
20 agreements to resell or repurchase; options; futures contracts;  
21 forward contracts; notional principal contracts such as swaps;  
22 equities; and foreign currency transactions are in this state if  
23 the average value of the assets is assigned to a regular place of  
24 business of the taxpayer within this state. Interest from federal  
25 funds sold and purchased and from securities purchased under resale  
26 agreements and securities sold under repurchase agreements are in  
27 this state if the average value of the assets is assigned to a

1 regular place of business of the taxpayer within this state. The  
2 amount of receipts and other income from investment assets and  
3 activities is in this state if assets are assigned to a regular  
4 place of business of the taxpayer within this state.

5 (8) The receipts from trading assets and activities,  
6 including, but not limited to, assets and activities in the matched  
7 book, in the arbitrage book, and foreign currency transactions, but  
8 excluding amounts otherwise sourced in this section, are in this  
9 state if the assets are assigned to a regular place of business of  
10 the taxpayer within this state.

11 Sec. 47. (1) The tax base of a taxpayer whose business  
12 activities consist of transportation services rendered either  
13 entirely within or partly within and partly outside of this state  
14 shall be determined as provided under this section and section 48.

15 (2) The tax base attributable to this state of a taxpayer  
16 described in subsection (1), other than a taxpayer whose activity  
17 consists of the transportation of oil or gas by pipeline, is that  
18 portion of the tax base of the taxpayer derived from transportation  
19 services wherever performed that the revenue miles of the taxpayer  
20 in this state bear to the revenue miles of the taxpayer everywhere.  
21 For a taxpayer providing maritime transportation, a revenue mile is  
22 in this state if such transportation occurs within 3 nautical miles  
23 of the Michigan shoreline.

24 (3) The tax base attributable to this state of a taxpayer  
25 whose business activity consists of the transportation both of  
26 property and of individuals shall be that portion of the entire tax  
27 base of the taxpayer that is equal to the sum of its passenger

1 miles and ton mile fractions, separately computed and individually  
2 weighted by the ratio of receipts from passenger transportation to  
3 total receipts from all transportation, and by the ratio of  
4 receipts from freight transportation to total receipts from all  
5 transportation, respectively.

6 (4) If a taxpayer can show that revenue mile information is  
7 not available or cannot be obtained without unreasonable expense to  
8 the taxpayer, the tax base attributable to this state shall be that  
9 portion of the tax base of the taxpayer derived from transportation  
10 services everywhere performed that the miles of transportation  
11 services performed in this state bears to the miles of  
12 transportation services performed everywhere.

13 (5) If the department determines that the information required  
14 for the calculations under this section are not available or cannot  
15 be obtained without unreasonable expense to the taxpayer, the  
16 department may use other available information that in the opinion  
17 of the department will result in an equitable allocation of the  
18 taxpayer's receipts to this state.

19 Sec. 48. (1) The tax base attributable to this state of a  
20 taxpayer whose business activity consists of the transportation of  
21 oil by pipeline, is the tax base of the taxpayer in the ratio that  
22 the barrel miles transported in this state bear to the barrel miles  
23 transported by the taxpayer everywhere.

24 (2) The tax base attributable to this state of a taxpayer  
25 whose business activities consists of the transportation of gas by  
26 pipeline is the tax base of the taxpayer in the ratio that the  
27 1,000 cubic feet miles transported in this state bear to the 1,000

1 cubic feet miles transported by the taxpayer everywhere.

2       Sec. 49. The tax base of a financial organization shall be  
3 apportioned to this state by multiplying the tax base by a fraction  
4 the numerator of which is the total gross receipts in this state  
5 during the tax years and the denominator of which is the total  
6 gross receipts of the taxpayer everywhere during the tax years.

7       Sec. 50. (1) Notwithstanding sections 43 through 46, a spun  
8 off corporation that qualified to calculate its sales factor for 7  
9 years under section 54 of former 1975 PA 228 may elect to calculate  
10 its sales factor under this section for an additional 4 years  
11 following those 7 years or 3 years if a taxpayer had an election  
12 approved under section 54(1)(e) of former 1975 PA 228. Prior to the  
13 end of the first year following the 7 years for which the taxpayer  
14 qualified under section 54 of former 1975 PA 228 and if the spun  
15 off corporation is not required to file amended returns under  
16 section 54(5) of former 1975 PA 228, the spun off corporation may  
17 request, in writing, approval from the state treasurer for the  
18 election of the 4 additional years under this section. If the  
19 taxpayer had an election approved under section 54(1)(e) of former  
20 1978 PA 228, the taxpayer is not required to seek approval under  
21 this section. The department shall approve the election under this  
22 subsection if the requirements of this section are met. The request  
23 shall include all of the following:

24       (a) A statement that the spun off corporation qualifies for  
25 the election under this section.

26       (b) A list of all corporations, limited liability companies,  
27 and any other business entities that the spun off corporation

1 controlled at the time of the restructuring transaction.

2 (c) A commitment by the spun off corporation to invest at  
3 least an additional \$200,000,000.00 of capital investment in this  
4 state within the additional 4 years and maintain at least 80% of  
5 the number of full-time equivalent employees in this state based on  
6 the number of full-time equivalent employees in this state at the  
7 beginning of the additional 4-year period for all of the additional  
8 4 years; a commitment by the spun off corporation to invest an  
9 additional \$400,000,000.00 in this state within the additional 4  
10 years; or a commitment by the spun off corporation to invest a  
11 total of \$1,300,000,000.00 in this state within the 11-year period  
12 beginning with the year in which the restructuring transaction  
13 under which a spun off corporation qualified under this subsection  
14 was completed. The 4-year period under this subdivision begins with  
15 the eighth year following the tax year in which the restructuring  
16 transaction under which a spun off corporation qualified under this  
17 subsection was completed. For purposes of this subdivision, the  
18 number of full-time equivalent employees includes employees in all  
19 of the following circumstances:

20 (i) On temporary layoff.

21 (ii) On strike.

22 (iii) On a type of temporary leave other than the type under  
23 subparagraphs (i) and (ii).

24 (iv) Transferred by the spun off corporation to a related  
25 entity or to its immediately preceding former parent corporation.

26 (v) Transferred by the spun off corporation to another  
27 employer because of the sale of the spun off corporation's location

1 in this state that was the work site of the employees.

2 (2) Prior to the end of the eleventh year following the  
3 restructuring transaction under which a spun off corporation  
4 qualified under subsection (1), a taxpayer that is a buyer of a  
5 plant located in this state that was included in the initial  
6 restructuring transaction under subsection (1) may elect to  
7 calculate its sales factor under subsection (3) and disregard sales  
8 by the taxpayer attributable to that plant to a former parent of a  
9 spun off corporation and the sales attributable to the plant shall  
10 be treated as sales by a spun off corporation. This election shall  
11 extend for a period of 4 years following the date that the plant  
12 was purchased reduced by the number of years for which the taxpayer  
13 calculated its sales factor pursuant to section 54(2) of former  
14 1975 PA 228. On or before the due date for filing the buyer's first  
15 annual return under this act following the purchase of the plant,  
16 the buyer shall request, in writing, approval from the department  
17 for the election provided under this section and shall attach a  
18 statement that the buyer qualifies for the election under this  
19 section.

20 (3) A spun off corporation qualified under subsection (1) or  
21 (2) that makes an election and is approved under subsection (1) or  
22 (2) calculates its sales factor under section 43 subject to both of  
23 the following:

24 (a) A purchaser in this state under section 44 does not  
25 include a person that purchases from a seller that was included in  
26 the purchaser's combined or consolidated annual return under this  
27 act but, as a result of the restructuring transaction, ceased to be

1 included in the purchaser's combined or consolidated annual return  
2 under this act. This subdivision applies only to sales that  
3 originate from a plant located in this state.

4 (b) Total sales under section 43 do not include sales to a  
5 purchaser that was a member of a Michigan affiliated group that had  
6 included the seller in the filing of a combined or consolidated  
7 annual return under this act but, as a result of the restructuring  
8 transaction, ceased to include the seller. This subdivision applies  
9 only to sales that originate from a plant located in this state to  
10 a location in this state.

11 (4) At the end of the fourth tax year following an election  
12 under this section, if the spun off corporation that elected to  
13 calculate its sales factor under this section for the additional 4  
14 years allowed under subsection (1) has failed to maintain the  
15 required number of employees or failed to pay or accrue the capital  
16 investment required under subsection (1)(c), the spun off  
17 corporation shall file amended annual returns under this act for  
18 the first through fourth tax years following the election under  
19 this section, regardless of the statute of limitations under  
20 section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax  
21 plus interest based on the sales factor as calculated under section  
22 43. Interest shall be calculated from the due date of the annual  
23 return under this act or former 1975 PA 228 on which an exemption  
24 under this section was first claimed.

25 (5) The amount of the spun off corporation's investment  
26 commitments required under this section shall not be reduced by the  
27 amount of any qualifying investments in Michigan plants that are

1 sold.

2 (6) As used in this section:

3 (a) "Restructuring transaction" means a tax free distribution  
4 under section 355 of the internal revenue code and includes tax  
5 free transactions under section 355 of the internal revenue code  
6 that are commonly referred to as spin offs, split ups, split offs,  
7 or type D reorganizations.

8 (b) "Spun off corporation" means an entity treated as a  
9 controlled corporation under section 355 of the internal revenue  
10 code. Controlled corporation includes a corporate subsidiary  
11 created for the purpose of a restructuring transaction, a limited  
12 liability company, or an operational unit or division with business  
13 activities that were previously carried out as a part of the  
14 distributing corporation.

15 Sec. 51. (1) If the apportionment provisions of this act do  
16 not fairly represent the extent of the taxpayer's business activity  
17 in this state, the taxpayer may petition for or the treasurer may  
18 require the following, with respect to all or a portion of the  
19 taxpayer's business activity, if reasonable:

20 (a) Separate accounting.

21 (b) The inclusion of 1 or more additional or alternative  
22 factors that will fairly represent the taxpayer's business activity  
23 in this state.

24 (c) The use of any other method to effectuate an equitable  
25 allocation and apportionment of the taxpayer's tax base.

26 (2) An alternate method may be used only if it is approved by  
27 the department.



1 lesser of 100% of the tax shown on the return for that taxable  
2 year, or 100% of the tax shown on the taxpayer's return for the  
3 preceding taxable year. The second, third, and fourth estimated  
4 payments in each tax year shall include adjustments, if necessary,  
5 to correct underpayments or overpayments from previous quarterly  
6 payments in the tax year.

7 (4) For a taxpayer that calculates and pays estimated taxes to  
8 the internal revenue service under section 6655(e) of the internal  
9 revenue code, the taxpayer may use the same methodology as used to  
10 calculate the annualized income installment or the adjusted  
11 seasonal installment, whichever is used as the basis for the  
12 federal estimated tax payment, to calculate the required estimated  
13 payment to be made with each quarterly return under this section.

14 (5) The interest provided by this act shall not be assessed if  
15 any of the following occur:

16 (a) If the sum of the estimated payments equals at least 85%  
17 of the tax liability for that taxable year.

18 (b) If the preceding year's tax liability under this act was  
19 \$40,000.00 or less and if the taxpayer submitted 4 equal  
20 installments the sum of which equals the immediately preceding tax  
21 year's tax liability.

22 (6) Each estimated return shall be made on a form prescribed  
23 by the department and shall include an estimate of the annual tax  
24 liability and other information required by the department. The  
25 form prescribed under this subsection may be combined with any  
26 other tax reporting form prescribed by the department.

27 (7) With respect to a taxpayer filing an estimated tax return

1 for the taxpayer's first tax year of less than 12 months, the  
2 amounts paid with each return shall be proportional to the number  
3 of payments made in the first tax year.

4 (8) Payments made under this section shall be a credit against  
5 the payment required with the annual tax return required in section  
6 72.

7 (9) If the department considers it necessary to ensure payment  
8 of the tax or to provide a more efficient administration of the  
9 tax, the department may require filing of the returns and payment  
10 of the tax for other than quarterly or annual periods.

11 (10) A taxpayer that elects under the internal revenue code to  
12 file an annual federal income tax return by March 1 in the year  
13 following the taxpayer's tax year and does not make a quarterly  
14 estimate or payment, or does not make a quarterly estimate or  
15 payment and files a tentative annual return with a tentative  
16 payment by January 15 in the year following the taxpayer's tax year  
17 and a final return by April 15 in the year following the taxpayer's  
18 tax year, has the same option in filing the estimated and annual  
19 returns required by this act.

20 Sec. 71. (1) A taxpayer subject to this act may elect to  
21 compute the tax imposed by this act for the first tax year if that  
22 tax year is less than 12 months in accordance with 1 of the  
23 following methods:

24 (2) The tax may be computed as if this act were effective on  
25 the first day of the taxpayer's annual accounting period and the  
26 amount computed shall be multiplied by a fraction, the numerator of  
27 which is the number of months in the taxpayer's first tax year and

1 the denominator of which is 12.

2 (3) The tax may be computed by determining the tax base in the  
3 first tax year in accordance with an accounting method satisfactory  
4 to the department that reflects the actual tax base attributable to  
5 the period.

6 Sec. 72. (1) An annual or final return shall be filed with the  
7 department in the form and content prescribed by the department by  
8 the last day of the fourth month after the end of the taxpayer's  
9 tax year. Any final tax liability shall be remitted with this  
10 return.

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

21 (3) If a taxpayer does not have an extension of time within  
22 which to file the federal income tax return for any tax year, the  
23 department, upon application of the taxpayer shall extend the date  
24 for filing the annual return. Interest at the rate under section  
25 23(2) of 1941 PA 122, MCL 205.23, shall be added to the amount of  
26 the tax unpaid for the period of the extension. The department  
27 shall require with the application payment of the estimated tax

1 liability unpaid for the tax period covered by the extension.

2 (4) An affiliated group as defined in this act, a controlled  
3 group of corporations as defined in section 1563 of the internal  
4 revenue code and further described in 26 CFR 1.414(b)-1 and  
5 1.414(c)-1 to 1.414(c)-5, or an entity under common control as  
6 defined in the internal revenue code shall consolidate the business  
7 income of the members of the affiliated group, member corporations  
8 of the controlled group, or entities under common control that have  
9 apportioned or allocated business income, to determine whether the  
10 group or entity shall pay a tax or file a return as provided under  
11 subsection (1). An individual member of an affiliated group or  
12 controlled group of corporations or an entity under common control  
13 is not required to file a return or pay the tax under this act if  
14 that member or entity has apportioned or allocated business income  
15 of less than \$100,000.00.

16 Sec. 73. (1) A taxpayer required to file a return under this  
17 act may be required to furnish a true and correct copy of any  
18 return or portion of any return filed under the provisions of the  
19 internal revenue code.

20 (2) A taxpayer shall file an amended return with the  
21 department showing any alteration in or modification of a federal  
22 income tax return that affects its tax base under this act. The  
23 amended return shall be filed within 2 years after the final  
24 determination by the internal revenue service.

25 Sec. 74. (1) At the request of the department, a person  
26 required by the internal revenue code to file or submit an  
27 information return of income paid to others shall, to the extent

1 the information is applicable to residents of this state, at the  
2 same time file or submit the information in the form and content  
3 prescribed to the department.

4 (2) At the request of the department, a voluntary association,  
5 joint venture, partnership, estate, or trust shall file a copy of  
6 any tax return or portion of any tax return that was filed under  
7 the provisions of the internal revenue code. The department may  
8 prescribe alternate forms of returns.

9 Sec. 75. (1) Persons that are members of the same unitary  
10 business group shall be treated as 1 taxpayer for purposes of any  
11 original return; amended return that includes the same taxpayers of  
12 the unitary business group which joined in filing the original  
13 return, extension, claim for refund, assessment, collection, and  
14 payment; and determination of the group's tax liability under this  
15 act.

16 (2) A unitary business group shall file a single combined tax  
17 return reporting the tax liability of all members of the group.

18 (3) The department may assess the entire amount of the tax and  
19 all additional taxes, penalty, and interest computed on the basis  
20 of the combined tax return against any 1 or more members of the  
21 unitary business group.

22 (4) The sales factor for a unitary business member is a  
23 fraction, the numerator of which is the total sales of the unitary  
24 business member in this state during the tax year and the  
25 denominator of which is the total sales of the unitary business  
26 group everywhere during the tax year. In the case of a unitary  
27 business group composed exclusively of taxpayers using the special

1 apportionment factors under section 47, 48, or 49 of this act, the  
2 unitary business member's tax base shall be apportioned by a  
3 fraction, the numerator of which is the special factor of the  
4 unitary business member in this state during the tax year and the  
5 denominator of which is the special factor of the unitary business  
6 group everywhere during the tax year. Sales between members of the  
7 unitary business group must be eliminated in calculating the sales  
8 factor or the special factor.

9 (5) In no event, however, will any unitary business group  
10 include members that are subject to apportionment by different  
11 apportionment factors.

12 (6) As used in this section:

13 (a) "Unitary business group" means a group of persons related  
14 through common ownership whose business activities are integrated  
15 with, are dependent upon, and contribute to each other. A unitary  
16 business group does not include a member whose business activity  
17 outside the United States is 80% or more of that member's total  
18 business activity. For purposes of this subdivision, business  
19 activity within the United States is measured by the sales factor  
20 ordinarily applicable under section 22 and chapter 4. The  
21 computation required by the preceding sentence shall, in each case,  
22 involve the division of the member's sales in the United States or  
23 insurance premiums on property or risk in the United States, as the  
24 case may be, by the respective worldwide figures for such items.  
25 Common ownership of a unitary business group shall be determined as  
26 follows:

27 (i) Common ownership in the case of a corporation or subchapter

1 S corporation is the direct or indirect control or ownership of  
2 more than 50% of the outstanding stock by vote and value and the  
3 direct or indirect control or ownership of more than 50% of the  
4 outstanding value of stock of the persons carrying on unitary  
5 business activity.

6 (ii) Common ownership in the case of partnerships is the direct  
7 or indirect ownership or control of more than 50% of the  
8 partnership interests of the partnerships carrying on unitary  
9 business activity.

10 (b) "Unitary business member" means a person that is a member  
11 of a unitary business group.

12 (c) "United States" means only the 50 states and the District  
13 of Columbia, but does not include any territory or possession of  
14 the United States or any area over which the United States has  
15 asserted jurisdiction or claimed exclusive rights with respect to  
16 the exploration for or exploitation of natural resources.

17 (7) For purposes of this section:

18 (a) An individual is considered the owner of the stock or the  
19 owner of partnership interests owned, directly or indirectly, by or  
20 for family members as defined by section 318(a)(1) of the internal  
21 revenue code.

22 (b) Unitary business activity can ordinarily be illustrated if  
23 the activities of the members are any of the following:

24 (i) In the same general line, such as manufacturing,  
25 wholesaling, retailing of tangible personal property, insurance,  
26 transportation, or finance.

27 (ii) Steps in a vertically structured enterprise or process,

1 such as the steps involved in the production of natural resources,  
2 which might include exploration, mining, refining, and marketing.

3 (iii) Functionally integrated through the exercise of strong  
4 centralized management, including, but not limited to, authority  
5 over such matters as purchasing, financing, tax compliance, product  
6 line, personnel, marketing, and capital investment.

7 Sec. 76. (1) A group of 2 or more persons may elect to be a  
8 consolidated taxpayer group for the purposes of this act if the  
9 group satisfies all of the following requirements:

10 (a) The group elects to include all persons having at least  
11 50% of the vote, if applicable, and value of their ownership  
12 interests owned or controlled, directly or constructively through  
13 related interests, by common owners during all or any portion of  
14 the tax period, together with the common owners. At the election of  
15 the group, entities that are not incorporated or formed under the  
16 laws of a state or of the United States and that meet the elected  
17 ownership test shall either be included in the group or excluded  
18 from the group. The group shall notify the department of the  
19 foregoing elections before the due date of the return in which the  
20 election is to become effective. If 50% of the vote, if applicable,  
21 and value of a person's ownership interests is owned or controlled  
22 by each of 2 consolidated taxpayer groups formed under the 50%  
23 ownership or control test, that person is a member of each group  
24 for the purposes of this section, and each group shall include in  
25 the group's taxable receipts 50% of that person's taxable receipts.  
26 Otherwise, all of that person's taxable receipts shall be included  
27 in the tax base of the consolidated taxpayer group of which the

1 person is a member. In no event shall the ownership or control of  
2 50% of the vote, if applicable, and value of a person's ownership  
3 interests by 2 otherwise unrelated groups form the basis for  
4 consolidating the groups into a single consolidated taxpayer group  
5 or permit any exclusion under subsection (3) of taxable receipts  
6 between members of the 2 groups. Subdivision (c) applies with  
7 respect to the elections described in this subdivision.

8 (b) The group makes the election to be treated as a  
9 consolidated taxpayer group in the manner prescribed under  
10 subsection (4).

11 (c) No member of the group is subject to the tax imposed under  
12 section 60.

13 (d) Subject to review and audit by the department, the group  
14 agrees that all of the following apply:

15 (i) The group shall file reports as a single taxpayer for at  
16 least the next 5 years following the election so long as at least 2  
17 or more of the members of the group meet the requirements of  
18 subdivision (a).

19 (ii) Before the expiration of the fifth taxable year, the group  
20 shall notify the department if it elects to cancel its designation  
21 as a consolidated taxpayer group. If the group does not notify the  
22 department, the election shall remain in effect for another 5  
23 years.

24 (iii) If at any time during any of those 5 years following the  
25 election, a former member of the group no longer meets the  
26 requirements under subdivision (a), that member shall report and  
27 pay the tax imposed under this act separately, as a member of a

1 unitary business group, or if the former member satisfies those  
2 requirements, with respect to another consolidated taxpayer group,  
3 as a member of that consolidated taxpayer group.

4 (iv) The group agrees to the application of subsection (2).

5 (2) A consolidated taxpayer group shall exclude taxable  
6 receipts between its members. Nothing in this section shall have  
7 the effect of excluding receipts received from persons that are not  
8 members of the group.

9 (3) To make the election to be a consolidated taxpayer group,  
10 a group of persons shall notify the department of the election in  
11 the manner prescribed by the department. The election shall be made  
12 before the later of the beginning of the first calendar quarter to  
13 which the election applies or June 15, 2008. The election shall be  
14 made on a form prescribed by the department for that purpose and  
15 shall be signed by 1 or more individuals with authority, separately  
16 or together, to make a binding election on behalf of all persons in  
17 the group. Any person acquired or formed after the filing of the  
18 election shall be included in the group if the person meets the  
19 requirements of subsection (1)(a), and the group shall notify the  
20 department of any additions to the group with the next tax return  
21 it files with the department.

22 (4) Each member of a consolidated taxpayer group is jointly  
23 and severally liable for the tax imposed by this act and any  
24 penalties or interest thereon. The department may require 1 person  
25 in the group to be the taxpayer for purposes of registration and  
26 remittance of the tax, but all members of the group are subject to  
27 assessment under this act.

1           (5) The sales factor for a consolidated member is calculated  
2 under section 45(1) excluding sales between consolidated members.  
3 The factors of each consolidated member are added together to total  
4 1 sales factor for the consolidated taxpayer group. The allocation  
5 of sales to determine the numerator of the sales factor is made as  
6 though each corporation is filing a separate return.

7           (6) As used in this section:

8           (a) "Consolidated member" means each person within a  
9 consolidated taxpayer group.

10           (b) "Consolidated taxpayer group" means a group of 2 or more  
11 persons treated as a single taxpayer for purposes of this act as  
12 the result of an election made under this section.

13           Sec. 77. (1) The tax imposed by this act shall be administered  
14 by the department pursuant to 1941 PA 122, MCL 205.1 to 205.31, and  
15 this act. If a conflict exists between 1941 PA 122, MCL 205.1 to  
16 205.31, and this act, the provisions of this act apply.

17           (2) The department may promulgate rules to implement this act  
18 pursuant to the administrative procedures act of 1969, 1969 PA 306,  
19 MCL 24.201 to 24.328.

20           (3) The department shall prescribe forms for use by taxpayers  
21 and may promulgate rules in conformity with this act for the  
22 maintenance by taxpayers of records, books, and accounts, and for  
23 the computation of the tax, the manner and time of changing or  
24 electing accounting methods and of exercising the various options  
25 contained in this act, the making of returns, and the  
26 ascertainment, assessment, and collection of the tax imposed under  
27 this act.

1           (4) The tax imposed by this act is in addition to all other  
2 taxes for which the taxpayer may be liable.

3           (5) The department shall prepare and publish statistics from  
4 the records kept to administer the tax imposed by this act that  
5 detail the distribution of tax receipts by type of business, legal  
6 form of organization, sources of tax base, timing of tax receipts,  
7 and types of deductions. The statistics shall not result in the  
8 disclosure of information regarding any specific taxpayer.

9           Sec. 78. The proceeds of the tax collected under this act  
10 shall be deposited in the general fund.

11           Enacting section 1. This act takes effect January 1, 2008.

12           Enacting section 2. This act does not take effect unless all  
13 of the following bills of the 94th Legislature are enacted into  
14 law:

15           (a) Senate Bill No. 94.

16           (b) Senate Bill No. 96.