

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1038

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 111 (MCL 208.1111), as amended by 2007 PA 207.

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 **AND LESS ANY PREVIOUSLY RECOGNIZED INCOME RELATED TO PROCEEDS ON**
8 **CONTINGENT SALES FOR FEDERAL INCOME TAX PURPOSES AND INCLUDED IN**
9 **THE TAXPAYER'S MODIFIED GROSS RECEIPTS TAX BASE, from any activity**
10 whether in intrastate, interstate, or foreign commerce carried on

1 for direct or indirect gain, benefit, or advantage to the taxpayer
2 or to others except for the following:

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

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

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

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

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

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

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

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

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

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

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

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

21 (g) Proceeds from any of the following:

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

23 (ii) The original issue of debt instruments.

24 (h) Refunds from returned merchandise.

25 (i) Cash and in-kind discounts.

26 (j) Trade discounts.

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

1 (l) Security deposits.

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

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

4 (o) Proceeds from a sale, transaction, exchange, involuntary
5 conversion, **MATURITY, REDEMPTION, REPURCHASE, RECAPITALIZATION,** or
6 other disposition **OR REORGANIZATION** of tangible, intangible, or
7 real property, ~~that~~ **LESS ANY GAIN FROM THE DISPOSITION OR**
8 **REORGANIZATION TO THE EXTENT THAT THE GAIN IS INCLUDED IN THE**
9 **TAXPAYER'S FEDERAL TAXABLE INCOME, IF THE PROPERTY SATISFIES 1 OR**
10 **MORE OF THE FOLLOWING:**

11 (i) **THE PROPERTY** is a capital asset as defined in section
12 1221(a) of the internal revenue code. ~~or~~

13 (ii) **THE PROPERTY IS** land that qualifies as property used in
14 the trade or business as defined in section 1231(b) of the internal
15 revenue code. ~~, less any gain from the disposition to the extent~~
16 ~~that gain is included in federal taxable income.~~

17 (iii) **THE PROPERTY IS USED IN A HEDGING TRANSACTION ENTERED INTO**
18 **BY THE TAXPAYER IN THE NORMAL COURSE OF THE TAXPAYER'S TRADE OR**
19 **BUSINESS PRIMARILY TO MANAGE THE RISK OF EXPOSURE TO FOREIGN**
20 **CURRENCY FLUCTUATIONS THAT AFFECT ASSETS, LIABILITIES, PROFITS,**
21 **LOSSES, EQUITY, OR INVESTMENTS IN FOREIGN OPERATIONS; INTEREST RATE**
22 **FLUCTUATIONS; OR COMMODITY PRICE FLUCTUATIONS. FOR PURPOSES OF THIS**
23 **SUBPARAGRAPH, THE ACTUAL TRANSFER OF TITLE OF REAL OR TANGIBLE**
24 **PERSONAL PROPERTY TO ANOTHER PERSON IS NOT A HEDGING TRANSACTION.**
25 **ONLY THE OVERALL NET GAIN FROM THE HEDGING TRANSACTIONS ENTERED**
26 **INTO DURING THE TAX YEAR IS INCLUDED IN GROSS RECEIPTS. AS USED IN**
27 **THIS SUBPARAGRAPH, "HEDGING TRANSACTION" MEANS THAT TERM AS DEFINED**

1 UNDER SECTION 1221 OF THE INTERNAL REVENUE CODE REGARDLESS OF
2 WHETHER THE TRANSACTION WAS IDENTIFIED BY THE TAXPAYER AS A HEDGE
3 FOR FEDERAL INCOME TAX PURPOSES, PROVIDED, HOWEVER, THAT
4 TRANSACTIONS EXCLUDED UNDER THIS SUBPARAGRAPH AND NOT IDENTIFIED AS
5 A HEDGE FOR FEDERAL INCOME TAX PURPOSES SHALL BE IDENTIFIABLE TO
6 THE DEPARTMENT BY THE TAXPAYER AS A HEDGE IN ITS BOOKS AND RECORDS.

7 (iv) THE PROPERTY IS INVESTMENT AND TRADING ASSETS MANAGED AS
8 PART OF THE PERSON'S TREASURY FUNCTION. FOR PURPOSES OF THIS
9 SUBPARAGRAPH, A PERSON PRINCIPALLY ENGAGED IN THE TRADE OR BUSINESS
10 OF PURCHASING AND SELLING INVESTMENT AND TRADING ASSETS IS NOT
11 PERFORMING A TREASURY FUNCTION. ONLY THE OVERALL NET GAIN FROM THE
12 TREASURY FUNCTION INCURRED DURING THE TAX YEAR IS INCLUDED IN GROSS
13 RECEIPTS. AS USED IN THIS SUBPARAGRAPH, "TREASURY FUNCTION" MEANS
14 THE POOLING AND MANAGEMENT OF INVESTMENT AND TRADING ASSETS FOR THE
15 PURPOSE OF SATISFYING THE CASH FLOW OR LIQUIDITY NEEDS OF THE
16 TAXPAYER'S TRADE OR BUSINESS.

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

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

1 to the commodity exchange act, 7 USC 1 to 27f, amounts realized
2 from the repayment, maturity, sale, or redemption of the principal
3 of a loan, bond, or mutual fund, certificate of deposit, or similar
4 marketable instrument provided such instruments are not held as
5 inventory.

6 (r) For a sales finance company, as defined in section 2 of
7 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
8 492.102, and directly or indirectly owned in whole or in part by a
9 motor vehicle manufacturer as of January 1, 2008, and for a person
10 that is a broker or dealer as defined under section 78c(a)(4) or
11 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
12 included in the unitary business group of that broker or dealer
13 that buys and sells for its own account, contracts that are subject
14 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
15 received under a repurchase agreement or other transaction properly
16 characterized as a loan.

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

26 (t) For a professional employer organization, any amount
27 charged by a professional employer organization that represents the

1 actual cost of wages and salaries, benefits, worker's compensation,
 2 payroll taxes, withholding, or other assessments paid to or on
 3 behalf of a covered employee by the professional employer
 4 organization under a professional employer arrangement.

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

9 (v) For an individual, estate, ~~partnership organized~~
 10 ~~exclusively for estate or gift planning purposes, or trust~~ **OTHER**
 11 **PERSON** organized ~~exclusively for estate or gift planning purposes,~~
 12 amounts received other than those from transactions, activities,
 13 and sources in the regular course of the taxpayer's trade or
 14 business. ~~, including~~ **FOR PURPOSES OF THIS SUBDIVISION, ALL OF THE**
 15 **FOLLOWING APPLY:**

16 (i) **AMOUNTS RECEIVED FROM TRANSACTIONS, ACTIVITIES, AND SOURCES**
 17 **IN THE REGULAR COURSE OF THE TAXPAYER'S BUSINESS INCLUDE, BUT ARE**
 18 **NOT LIMITED TO,** the following:

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

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

26 (C) ~~(iii)~~ Receipts derived from isolated sales, leases,
 27 ~~assignment~~ **ASSIGNMENTS,** licenses, divisions, or other infrequently

1 occurring dispositions, transfers, or transactions involving
2 **TANGIBLE, INTANGIBLE, OR REAL** property if the property is or was
3 used in the taxpayer's trade or business operation.

4 (D) ~~(iv)~~ Receipts derived from the sale of **AN INTEREST IN** a
5 business.

6 (E) ~~(v)~~ Receipts ~~excluded from gross receipts under this~~
7 ~~subsection for an individual, estate, partnership organized~~
8 ~~exclusively for estate or gift planning purposes, or trust~~
9 ~~organized exclusively for estate or gift planning purposes~~ **DERIVED**
10 **FROM THE LEASE OR RENTAL OF REAL PROPERTY.**

11 (ii) **RECEIPTS EXCLUDED FROM GROSS RECEIPTS** include, but are not
12 limited to, the following:

13 (A) ~~Personal~~ **RECEIPTS DERIVED FROM** investment activity,
14 including interest, dividends, **ROYALTIES**, and gains from a ~~personal~~
15 **AN** investment portfolio or retirement account, **IF THE INVESTMENT**
16 **ACTIVITY IS NOT PART OF THE TAXPAYER'S TRADE OR BUSINESS.**

17 (B) ~~Disposition~~ **RECEIPTS DERIVED FROM THE DISPOSITION** of
18 tangible, intangible, or real property held for personal use and
19 enjoyment, such as a personal residence or personal assets.

20 (W) **RECEIPTS DERIVED FROM INVESTMENT ACTIVITY BY A PERSON THAT**
21 **IS ORGANIZED EXCLUSIVELY TO CONDUCT INVESTMENT ACTIVITY AND THAT**
22 **DOES NOT CONDUCT INVESTMENT ACTIVITY FOR ANY PERSON OTHER THAN AN**
23 **INDIVIDUAL OR A PERSON RELATED TO THAT INDIVIDUAL OR BY A COMMON**
24 **TRUST FUND ESTABLISHED UNDER THE COLLECTIVE INVESTMENT FUNDS ACT,**
25 **1941 PA 174, MCL 555.101 TO 555.113. FOR PURPOSES OF THIS**
26 **SUBDIVISION, A PERSON IS RELATED TO AN INDIVIDUAL IF THAT PERSON IS**
27 **A SPOUSE, BROTHER OR SISTER, WHETHER OF THE WHOLE OR HALF BLOOD OR**

1 BY ADOPTION, ANCESTOR, LINEAL DESCENDENT OF THAT INDIVIDUAL OR
2 RELATED PERSON, OR A TRUST BENEFITING THAT INDIVIDUAL OR 1 OR MORE
3 PERSONS RELATED TO THAT INDIVIDUAL.

4 (X) INTEREST INCOME AND DIVIDENDS DERIVED FROM OBLIGATIONS OR
5 SECURITIES OF THE UNITED STATES GOVERNMENT, THIS STATE, OR ANY
6 GOVERNMENTAL UNIT OF THIS STATE. AS USED IN THIS SUBDIVISION,
7 "GOVERNMENTAL UNIT" MEANS THAT TERM AS DEFINED IN SECTION 3 OF THE
8 SHARED CREDIT RATING ACT, 1985 PA 227, MCL 141.1053.

9 (Y) DIVIDENDS AND ROYALTIES RECEIVED OR DEEMED RECEIVED FROM A
10 FOREIGN OPERATING ENTITY OR A PERSON OTHER THAN A UNITED STATES
11 PERSON, INCLUDING, BUT NOT LIMITED TO, THE AMOUNTS DETERMINED UNDER
12 SECTION 78 OF THE INTERNAL REVENUE CODE AND SECTIONS 951 TO 964 OF
13 THE INTERNAL REVENUE CODE.

14 (Z) TO THE EXTENT NOT DEDUCTED AS PURCHASES FROM OTHER FIRMS
15 UNDER SECTION 203, EACH OF THE FOLLOWING:

16 (i) SALES OR USE TAXES COLLECTED FROM OR REIMBURSED BY A
17 CONSUMER OR OTHER TAXES THE TAXPAYER COLLECTED DIRECTLY FROM OR WAS
18 REIMBURSED BY A PURCHASER AND REMITTED TO A LOCAL, STATE, OR
19 FEDERAL TAX AUTHORITY.

20 (ii) IN THE CASE OF RECEIPTS FROM THE SALE OF CIGARETTES OR
21 TOBACCO PRODUCTS BY A WHOLESALE DEALER, RETAIL DEALER, DISTRIBUTOR,
22 MANUFACTURER, OR SELLER, AN AMOUNT EQUAL TO THE FEDERAL AND STATE
23 EXCISE TAXES PAID BY ANY PERSON ON OR FOR SUCH CIGARETTES OR
24 TOBACCO PRODUCTS UNDER SUBTITLE E OF THE INTERNAL REVENUE CODE OR
25 OTHER APPLICABLE STATE LAW.

26 (iii) IN THE CASE OF RECEIPTS FROM THE SALE OF MOTOR FUEL BY A
27 PERSON WITH A MOTOR FUEL TAX LICENSE OR A RETAIL DEALER, AN AMOUNT

Senate Bill No. 1038 (H-11) as amended June 28, 2008

1 EQUAL TO FEDERAL AND STATE EXCISE TAXES PAID BY ANY PERSON ON SUCH
2 MOTOR FUEL UNDER SECTION 4081 OF THE INTERNAL REVENUE CODE OR UNDER
3 OTHER APPLICABLE STATE LAW.

4 (iv) IN THE CASE OF RECEIPTS FROM THE SALE OF BEER, WINE, OR
5 INTOXICATING LIQUOR BY A PERSON HOLDING A LICENSE TO SELL,
6 DISTRIBUTE, OR PRODUCE THOSE PRODUCTS, AN AMOUNT EQUAL TO FEDERAL
7 AND STATE EXCISE TAXES PAID BY ANY PERSON ON OR FOR SUCH BEER,
8 WINE, OR INTOXICATING LIQUOR UNDER SUBTITLE E OF THE INTERNAL
9 REVENUE CODE OR OTHER APPLICABLE STATE LAW.

10 (v) IN THE CASE OF RECEIPTS FROM THE SALE OF COMMUNICATION,
11 VIDEO, INTERNET ACCESS AND RELATED SERVICES AND EQUIPMENT, ANY
12 GOVERNMENT IMPOSED TAX, FEE, OR OTHER IMPOSITION IN THE NATURE OF A
13 TAX OR FEE REQUIRED BY LAW, ORDINANCE, REGULATION, RULING, OR OTHER
14 LEGAL AUTHORITY AND [AUTHORIZED TO BE] CHARGED ON A CUSTOMER'S BILL OR
15 INVOICE. THIS
16 SUBPARAGRAPH DOES NOT INCLUDE THE RECOVERY OF NET INCOME TAXES, NET
17 WORTH TAXES, PROPERTY TAXES, OR THE TAX IMPOSED UNDER THIS ACT.

18 (vi) IN THE CASE OF RECEIPTS FROM THE SALE OF ELECTRICITY,
19 NATURAL GAS, OR OTHER ENERGY SOURCE, ANY GOVERNMENT IMPOSED TAX,
20 FEE, OR OTHER IMPOSITION IN THE NATURE OF A TAX OR FEE REQUIRED BY
21 LAW, ORDINANCE, REGULATION, RULING, OR OTHER LEGAL AUTHORITY AND
22 [AUTHORIZED TO BE]
23 CHARGED ON A CUSTOMER'S BILL OR INVOICE. THIS SUBPARAGRAPH DOES NOT
24 INCLUDE THE RECOVERY OF NET INCOME TAXES, NET WORTH TAXES, PROPERTY
25 TAXES, OR THE TAX IMPOSED UNDER THIS ACT.

26 (vii) ANY DEPOSIT REQUIRED UNDER ANY OF THE FOLLOWING:

27 (A) 1976 IL 1, MCL 445.571 TO 445.576.

(B) R 436.1629 OF THE MICHIGAN ADMINISTRATIVE CODE.

(C) R 436.1723A OF THE MICHIGAN ADMINISTRATIVE CODE.

1 (D) ANY SUBSTANTIALLY SIMILAR BEVERAGE CONTAINER DEPOSIT LAW
2 OF ANOTHER STATE.

3 (AA) AMOUNTS ATTRIBUTABLE TO AN OWNERSHIP INTEREST IN A PASS-
4 THROUGH ENTITY, REGULATED INVESTMENT COMPANY, REAL ESTATE
5 INVESTMENT TRUST, OR COOPERATIVE CORPORATION WHOSE BUSINESS
6 ACTIVITIES ARE TAXABLE UNDER SECTION 203 OR WOULD BE SUBJECT TO THE
7 TAX UNDER SECTION 203 IF THE BUSINESS ACTIVITIES WERE IN THIS
8 STATE. FOR PURPOSES OF THIS SUBDIVISION:

9 (i) "COOPERATIVE CORPORATION" MEANS THOSE ORGANIZATIONS
10 DESCRIBED UNDER SUBCHAPTER T OF THE INTERNAL REVENUE CODE.

11 (ii) "PASS-THROUGH" ENTITY MEANS A PARTNERSHIP, SUBCHAPTER S
12 CORPORATION, OR OTHER PERSON, OTHER THAN AN INDIVIDUAL, THAT IS NOT
13 CLASSIFIED FOR FEDERAL INCOME TAX PURPOSES AS AN ASSOCIATION TAXED
14 AS A CORPORATION.

15 (iii) "REAL ESTATE INVESTMENT TRUST" MEANS THAT TERM AS DEFINED
16 UNDER SECTION 856 OF THE INTERNAL REVENUE CODE.

17 (iv) "REGULATED INVESTMENT COMPANY" MEANS THAT TERM AS DEFINED
18 UNDER SECTION 851 OF THE INTERNAL REVENUE CODE.

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 broker or dealer as defined under
17 section 78c(a)(4) or (5) of the securities exchange act of 1934, 15
18 USC 78c, or a person included in the unitary business group of that
19 broker or dealer that buys and sells for its own account, contracts
20 that are subject to the commodity exchange act, 7 USC 1 to 27f, the
21 cost of securities as defined under section 475(c)(2) of the
22 internal revenue code and the cost of commodities as defined under
23 section 475(e)(2)(b), (c), and (d) of the internal revenue code,
24 excluding interest expense other than interest expense related to
25 repurchase agreements.

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

27 (i) Personal property under lease or principally intended for

1 lease rather than sale.

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

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

6 (a) The chairperson of the board.

7 (b) The president, vice president, secretary, or treasurer of
8 the corporation or board.

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

11 Enacting section 1. This amendatory act is retroactive and
12 effective for taxes levied on and after January 1, 2008.

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

16 (a) House Bill No. 4301.

17 (b) House Bill No. 4628.