

HOUSE BILL No. 4546

March 29, 2007, Introduced by Reps. Horn, Elsenheimer, Green, Hildenbrand, Huizenga, Pavlov, Moss, Steil, Caswell, Rick Jones, Opsommer, Brandenburg, Pastor, Amos, Ward, Casperson, LaJoy, Pearce, Shaffer, Acciavatti, Emmons, Garfield, Wenke, Calley, Proos, David Law, Moolenaar, Marleau, Gaffney, Stakoe and Walker and referred to the Committee on Tax Policy.

A bill to provide for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes 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; to provide for the interrelation of this act with other acts; and to make appropriations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 1

Sec. 1. This act shall be known and may be cited as the "Michigan commercial activity tax act".

1 Sec. 2. (1) For the purposes of this act, the words and
2 phrases defined in sections 3 through 9 shall have the meanings
3 respectively ascribed to them in those sections.

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

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

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

1 incidental to another or others of his or her business activities,
2 each activity shall be considered to be business engaged in within
3 the meaning of this act.

4 (3) Except as otherwise provided in this subsection or section
5 10, "business income" means that part of federal taxable income
6 derived from business activity. For a partnership or S corporation,
7 business income includes payments and items of income and expense
8 that are attributable to business activity of the partnership or S
9 corporation and separately reported to the partners or
10 shareholders. For a tax-exempt person, business income means only
11 that part of federal taxable income derived from unrelated business
12 activity.

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

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

21 (3) "Consolidated member" means each person within a
22 consolidated taxpayer group.

23 (4) "Consolidated taxpayer group" means a group of 2 or more
24 persons treated as a single taxpayer for purposes of this act as
25 the result of an election made under section 96.

26 (5) "Corporation" means a person that is a corporation under
27 the internal revenue code.

1 (6) "Department" means the department of treasury.

2 Sec. 5. (1) "Employee" means an employee as defined in section
3 3401(c) of the internal revenue code. A person from whom an
4 employer is required to withhold for federal income tax purposes is
5 prima facie considered an employee.

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

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

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

20 Sec. 6. (1) "Gross receipts" means the total revenue of a
21 person determined as follows:

22 (a) For a person treated for federal income tax purposes as a
23 corporation, an amount computed under subparagraphs (i) and (ii):

24 (i) Add all of the following:

25 (A) The amount of gross receipts entered on line 1c, internal
26 revenue service form 1120.

27 (B) The amount of dividends, interest, gross rents, gross

royalties, and net gain from form 4797 entered on lines 4 through 7 and line 9, internal revenue service form 1120.

(C) The amounts entered as short- and long-term sales price on schedule D of form 1120 or 1120-A for assets not used in the ordinary course of the conduct of a trade or business.

(D) The net amounts, but not less than zero, entered as short- and long-term gain on schedule D of form 1120 or 1120-A for assets used in the ordinary course of the conduct of a trade or business.

(E) The amounts, but not less than zero, of other income entered on line 10 of internal revenue service form 1120 resulting from the conduct of a trade or business.

(ii) Subtract each of the following:

(A) Bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included in subparagraph (i) for the current reporting period or a past reporting period.

(B) Allowable deductions from internal revenue service form 1120, schedule C, to the extent that the relating dividend income is included in the tax base.

(C) To the extent included in subparagraph (i), other amounts authorized by this section.

(b) For a person treated for federal income tax purposes as a partnership, an amount computed under subparagraphs (i) and (ii):

(i) Add all of the following:

(A) The amount of gross receipts entered on line 1c, internal revenue service form 1065.

(B) The amount, but not less than zero, of ordinary income and net gain from form 4797 entered on lines 4 and 6 of internal

1 revenue service form 1065.

2 (C) The amounts, but not less than zero, of other income
3 entered on line 7 of internal revenue service form 1065 resulting
4 from the conduct of a trade or business.

5 (D) Gross farm income as defined for line 5, internal revenue
6 service form 1065.

7 (E) Gross rents used to calculate amounts reported on lines 2
8 and 3, internal revenue service form 1065, schedule K-1.

9 (F) The amounts entered as short- and long-term sales price on
10 schedule D of form 1065 from assets not used in the ordinary course
11 of the conduct of a trade or business.

12 (G) The net amounts, but not less than zero, entered as short-
13 and long-term gain on schedule D of form 1065 from assets used in
14 the ordinary course of the conduct of a trade or business.

15 (H) The amount of guaranteed payments, interest income,
16 dividends, and royalties entered on lines 4 through 7, internal
17 revenue service form 1065, schedule K-1.

18 (ii) Subtract each of the following:

19 (A) Bad debt expensed for federal income tax purposes that
20 corresponds to items of gross receipts included in subparagraph (i)
21 for the current reporting period or a past reporting period.

22 (B) To the extent included in subparagraph (i), other amounts
23 authorized by this section.

24 (c) For a person, other than a person treated for federal
25 income tax purposes as a corporation or partnership, an amount
26 determined in a manner substantially equivalent to the amounts
27 calculated for subdivision (a) or (b).

1 (d) A person shall exclude amounts received in an agency
2 capacity.

3 (e) A person shall exclude from its total gross receipts, to
4 the extent included under subdivision (a), (b), or (c), only the
5 following funds that are mandated by contract to be distributed to
6 other persons:

7 (i) Sales commissions to nonemployees, including split-fee real
8 estate commissions.

9 (ii) The tax basis as determined under the internal revenue
10 code of securities underwritten.

11 (iii) Subcontracting payments handled by the taxable entity to
12 provide services, labor, or materials in connection with the actual
13 or proposed design, construction, remodeling, or repair of
14 improvements on real property or the location of the boundaries of
15 real property.

16 (f) A taxable entity shall exclude from its total gross
17 receipts, to the extent included under subdivision (a), (b), or
18 (c), the tax basis as determined under the internal revenue code of
19 securities and loans sold.

20 (g) A taxable entity shall exclude from its gross receipts, to
21 the extent included under subdivision (a), (b), or (c), sales, use,
22 excise, and fuel taxes and assessments, fees, levies, fines,
23 penalties, or other payments established by law that are the legal
24 obligation of another, paid to any local, state, or federal
25 governmental authority.

26 (h) A taxable entity shall exclude from its total gross
27 receipts, to the extent included under subdivision (a), (b), or

1 (c), amounts received from a vendor related to goods or services
2 sold by the vendor to the taxable entity, including, but not
3 limited to, volume purchase discounts, promotional allowances, and
4 advertising allowances.

5 (i) Gross receipts do not include amounts not received by a
6 person but that are only deemed received under the internal revenue
7 code.

8 (j) Except as provided by subdivision (e), a payment made
9 under an ordinary contract for the provision of services in the
10 regular course of business shall not be excluded.

11 (k) As used in this subsection, a reference to an internal
12 revenue service form includes a variant of the form. For example, a
13 reference to form 1120 includes forms 1120-A, 1120-S, and other
14 variants of form 1120. A reference to an internal revenue service
15 form also includes any subsequent form with a different number or
16 designation that substantially provides the same information as the
17 original form. A reference to an amount entered on a line number on
18 an internal revenue service form includes the corresponding amount
19 entered on a variant of the form, or a subsequent form, with a
20 different line number.

21 (2) "Insurance company" means an authorized insurer as defined
22 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
23 500.106.

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

27 (4) "Nonbusiness income" means all income from casual

1 transactions and all income other than business income. For a tax-
2 exempt person, nonbusiness income means all income derived from
3 unrelated business activity other than business income.

4 Sec. 7. (1) "Person" means an individual, firm, bank,
5 financial institution, limited partnership, limited liability
6 partnership, co-partnership, partnership, joint venture,
7 association, corporation, subchapter S corporation, limited
8 liability company, receiver, estate, trust, or any other group or
9 combination of groups acting as a unit.

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

13 (3) "Revenue mile" means the transportation for a
14 consideration of 1 net ton in weight or 1 passenger the distance of
15 1 mile.

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

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

24 (a) The transfer of title to, or possession of, property that
25 is stock in trade or other property of a kind that would properly
26 be included in the inventory of the taxpayer if on hand at the
27 close of the tax period or property held by the taxpayer primarily

1 for sale to customers in the ordinary course of the taxpayer's
2 trade or business.

3 (b) The performance of services that constitute business
4 activities other than those included in subdivision (a), or any
5 combination of business activities described in this subdivision
6 and subdivision (a).

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

9 (d) Sale or sales do not include dividends, interest, and
10 royalties except to the extent earned in the ordinary course of a
11 trade or business.

12 (3) "State" means any state of the United States, the District
13 of Columbia, the Commonwealth of Puerto Rico, any territory or
14 possession of the United States, and any foreign country, or a
15 political subdivision of any of the foregoing.

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

20 (2) "Tax-exempt person" means an organization that is exempt
21 from federal income tax under section 501(a) of the internal
22 revenue code, and a partnership, limited liability company, joint
23 venture, unincorporated association, or other group or combination
24 of organizations acting as a unit if all such organizations are
25 exempt from federal income tax under section 501(a) of the internal
26 revenue code and if all activities of the unit are exclusively
27 related to the charitable, educational, or other purposes or

1 functions that are the basis for the exemption of such
2 organizations from federal income tax, except the following:

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

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

10 (3) "Tax year" or "taxable year" means the calendar year, or
11 the fiscal year ending during the calendar year, upon the basis of
12 which the tax base of a taxpayer is computed under this act. If a
13 return is made for a fractional part of a year, tax year means the
14 period for which the return is made. Except for the first return
15 required by this act, a taxpayer's tax year is for the same period
16 as is covered by its federal income tax return. A person that has a
17 52- or 53-week tax year beginning not more than 7 days before
18 December 31 of any year is considered to have a tax year beginning
19 after December of that tax year.

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

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

25 (6) "Unitary business group" means a group of persons related
26 through common ownership whose business activities are integrated
27 with, are dependent upon, and contribute to each other. A unitary

1 business group does not include a member whose business activity
2 outside the United States is 80% or more of that member's total
3 business activity. For purposes of this subsection, business
4 activity within the United States is measured by the sales factor
5 ordinarily applicable under sections 10 and 70 through 81. The
6 computation required by the preceding sentence shall, in each case,
7 involve the division of the member's sales in the United States or
8 insurance premiums on property or risk in the United States, as the
9 case may be, by the respective worldwide figures for such items.

10 Common ownership of a unitary business group shall be determined as
11 follows:

12 (a) Common ownership in the case of a corporation or
13 subchapter S corporation is the direct or indirect control or
14 ownership of more than 50% of the outstanding stock by vote and
15 value and the direct or indirect control or ownership of more than
16 50% of the outstanding value of stock of the persons carrying on
17 unitary business activity.

18 (b) Common ownership in the case of partnerships is the direct
19 or indirect ownership or control of more than 50% of the
20 partnership interests of the partnerships carrying on unitary
21 business activity.

22 (7) For purposes of subsection (6):

23 (a) An individual is considered the owner of the stock or the
24 owner of partnership interests owned, directly or indirectly, by or
25 for family members as defined by section 318(a)(1) of the internal
26 revenue code.

27 (b) Unitary activity can ordinarily be illustrated if the

1 activities of the members are any of the following:

2 (i) In the same general line, such as manufacturing,
3 wholesaling, retailing of tangible personal property, insurance,
4 transportation, or finance.

5 (ii) Steps in a vertically structured enterprise or process,
6 such as the steps involved in the production of natural resources,
7 which might include exploration, mining, refining, and marketing.

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

12 (c) In no event, however, will any unitary business group
13 include members that are subject to apportionment by different
14 apportionment factors.

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

20 (8) "Unitary business member" means a person that is a member
21 of a unitary business group.

22 Sec. 10. (1) A foreign person shall calculate business income
23 and gross receipts under this section and, except as otherwise
24 provided in this section, the business license tax base and
25 business income 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 and except

1 for a taxpayer that pays the tax imposed under section 60 of this
2 act, the business license tax base of a foreign person includes the
3 sum of gross receipts and the adjustments under section 23 that are
4 related to United States business activity, whether or not the
5 foreign person is subject to taxation under the internal revenue
6 code.

7 (3) Except as otherwise provided in this section and except
8 for a taxpayer that pays the tax imposed under section 60, the
9 business income tax base of a foreign person includes the sum of
10 business income and the adjustments under section 32 that are
11 related to United States business activity, whether or not the
12 foreign person is subject to taxation under the internal revenue
13 code.

14 (4) To calculate business income, gross receipts, and the
15 adjustments under sections 23 and 32 that are related to United
16 States business activity, a foreign person that does not have a
17 permanent establishment in the United States during the tax year or
18 that is not subject to taxation under the internal revenue code for
19 the tax year may use amounts that reasonably approximate the
20 federal taxable income and the permitted deductions the person
21 would have had had the person been subject to the internal revenue
22 code, provided the foreign person does not in the ordinary course
23 of its business maintain tax or financial accounting records in
24 accordance with the tax accounting requirements of the internal
25 revenue code. The tax base of a foreign person described in this
26 subsection shall not include gross income from sales shipped or
27 delivered to any purchaser within the United States and for which

1 title transfers outside the United States.

2 (5) To calculate business income, gross receipts, and the
3 adjustments under sections 23 and 32 that are related to United
4 States business activity, a Canadian person that is subject to
5 Canadian federal income tax under the income tax act (RSC 1985, c.
6 1 (5th Supp)) may use amounts properly calculated under the income
7 tax act (RSC 1985, c. 1 (5th Supp)) to reasonably approximate
8 business income, gross receipts, and the adjustments under sections
9 23 and 32 that are related to United States business activity.

10 Amounts calculated under this subsection are presumed to reasonably
11 approximate business income, gross receipts, and the adjustments
12 under sections 23 and 32 that are related to United States business
13 activity. The business income tax base of a Canadian person shall
14 not include gross receipts from sales shipped or delivered to any
15 purchaser within the United States and for which title transfers
16 outside the United States. As used in this subsection, "Canadian
17 person" means a foreign person that does not have a permanent
18 establishment in the United States during the tax year or that is
19 not subject to taxation under the internal revenue code for the tax
20 year and is either of the following:

21 (a) An entity formed under the laws of Canada or a province of
22 Canada.

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

25 (6) As used in this section:

26 (a) "Business income" means, for a foreign person, gross
27 income attributable to the taxpayer's United States business

1 activity and gross income derived from sources within the United
2 States minus the deductions allowed under the internal revenue code
3 that are related to that gross income. Gross income includes the
4 proceeds from sales shipped or delivered to any purchaser within
5 the United States and for which title transfers within the United
6 States; proceeds from services performed within the United States;
7 and a pro rata proportion of the proceeds from services performed
8 both within and outside the United States, based on cost of
9 performance.

10 (b) "Gross receipts" means, for a foreign person, gross
11 receipts as defined in section 6 from United States business
12 activity or from sources within the United States. Gross receipts
13 include all sales for which title transfers within the United
14 States; proceeds from all services performed within the United
15 States; and a pro rata portion of proceeds from services performed
16 both within and outside of the United States based on costs of
17 performance.

18 (c) "Permanent establishment" means either of the following:

19 (i) If an income tax treaty applies to the foreign person, that
20 term as defined in that income tax treaty in effect between the
21 United States and another nation.

22 (ii) If an income tax treaty does not apply to the foreign
23 person, that term as defined in the United States model income tax
24 convention.

25 (d) "Property" means, for a foreign person, all of the
26 taxpayer's real and tangible personal property owned or rented in
27 the United States during the tax year.

1 (e) "United States person" means that term as defined in
2 section 7701(a)(30) of the internal revenue code.

3 (7) As used in this section and sections 23, 32, and 73,
4 "foreign person" means either of the following:

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

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

11 CHAPTER 2

12 Sec. 20. (1) Except as otherwise provided in this act, there
13 is levied and imposed a business license tax on every person with
14 business activity and nexus within this state. The business license
15 tax is imposed upon the business license tax base as determined
16 under section 23 after allocation or apportionment to this state
17 minus \$350,000.00 at the rates provided below:

18 (a) Except as provided in subdivision (b), the rate of the
19 business license tax is .48%.

20 (b) The rate of the business license tax is .24% for those
21 persons primarily engaged in retail trades or wholesale trades.

22 (2) A person with gross receipts apportioned to this state in
23 an amount equal to or less than \$350,000.00 is subject to the
24 business license tax as follows:

25 (a) A person with no employees has no tax liability and no
26 filing responsibility.

27 (b) A person with employees shall pay a business license tax

1 in the amount of \$150.00.

2 (3) In no event shall a person subject to the business license
3 tax pay a business license tax in excess of \$2,000,000.00. For
4 purposes of this subsection, a unitary business group and a
5 consolidated taxpayer group is a single person.

6 (4) The tax levied and imposed under this section is upon the
7 privilege of doing business in this state.

8 Sec. 21. As used in this section and section 20:

9 (a) "Other trades" means the trades described in division A
10 through E and H through J of the 1987 standard industrial
11 classification manual published by the federal office of management
12 and budget.

13 (b) "Primarily engaged in retail trades or wholesale trades"
14 means:

15 (i) Any person that engages solely in the wholesale trades and
16 retail trades.

17 (ii) Any unitary business member or consolidated member that
18 engages solely in the wholesale trades and retail trades,
19 determined separately for each member after elimination of all
20 transactions between the members of the unitary business group or
21 the consolidated taxpayer group.

22 (iii) Any person that engages in wholesale trades and retail
23 trades and also engages in other trades, and has gross receipts
24 from the wholesale trades and retail trades greater than the gross
25 receipts from other trades.

26 (iv) Any unitary business member or consolidated member that
27 engages in wholesale trades and retail trades and also engages in

1 other trades, tested separately, that has gross receipts from the
2 wholesale trades and retail trades greater than the gross receipts
3 from other trades. Gross receipts for purposes of this test are
4 measured separately for each member before apportionment and after
5 elimination of all transactions between the members of the unitary
6 business group or the consolidated taxpayer group.

7 (v) A person is primarily engaged in retail trades or
8 wholesale trades only if each of the following is satisfied:

9 (A) The total revenue from the person's activities in retail
10 trades or wholesale trades is greater than the total revenue from
11 the person's activities in other trades.

12 (B) Less than 50% of the total revenue from the person's
13 activities in retail trades or wholesale trades comes from the sale
14 of products that it produces or products that are produced by a
15 person that is part of a unitary business group or consolidated
16 taxpayer group to which the person is a member.

17 (c) "Retail trades" means the activities described in division
18 G of the 1987 standard industrial classification manual published
19 by the federal office of management and budget.

20 (d) "Wholesale trades" means the activities described in
21 division F of the 1987 standard industrial classification manual
22 published by the federal office of management and budget.

23 Sec. 22. (1) An out-of-state person has nexus in this state if
24 that person engages in any of the following activities:

25 (a) Has 1 or more employees who are residents of this state
26 conducting business activity in this state.

27 (b) Owns, rents, leases, maintains, or has the right to use

1 and uses tangible personal or real property that is permanently or
2 temporarily physically located in this state.

3 (c) Has employees who own, rent, lease, use, or maintain an
4 office or other establishment in this state.

5 (d) Has agents, representatives, independent contractors,
6 brokers, or others acting on its behalf that own, rent, lease, use,
7 or maintain an office or other establishment in this state, and the
8 office or other establishment is used in the representation of the
9 out-of-state person in this state and is significantly associated
10 with the out-of-state person's ability to establish and maintain a
11 market in this state.

12 (e) Has goods delivered to this state in vehicles it owns,
13 rents, leases, uses, or maintains or has goods delivered by a
14 related party acting as a representative of the out-of-state
15 person.

16 (f) Regularly and systematically conducts business activity in
17 this state through its employees, agents, representatives,
18 independent contractors, brokers, or others acting on its behalf,
19 whether or not these individuals or organizations reside in this
20 state.

21 (2) For purposes of subsection (1)(f), regular and systematic
22 business activity including, but not limited to those activities
23 listed under this subsection, exists if at least 10 days of
24 business activity occur in this state during that person's taxable
25 year. If less than 10 days of business activity occur during that
26 person's taxable year, regular and systematic business activity may
27 exist depending on the facts and circumstances of the taxpayer's

1 in-state business activity. Any of the following activities
2 conducted by the taxpayer in this state for 2 or more days within a
3 taxable year will be rebuttably presumed to constitute regular and
4 systematic business activity:

5 (a) Soliciting sales.

6 (b) Making repairs or providing maintenance or service to
7 property sold or to be sold.

8 (c) Collecting current or delinquent accounts related to sales
9 of tangible personal property through assignment or otherwise.

10 (d) Installing or supervising installation at or after
11 shipment or delivery.

12 (e) Conducting training for employees, agents,
13 representatives, independent contractors, brokers, or others acting
14 on its behalf, or for customers or potential customers.

15 (f) Providing customers any kind of technical assistance or
16 service, including, but not limited to, engineering assistance,
17 design service, quality control, product inspections, or similar
18 services.

19 (g) Investigating, handling, or otherwise assisting in
20 resolving customer complaints.

21 (h) Providing consulting services.

22 (i) Soliciting, negotiating, or entering into franchising,
23 licensing, or similar agreements.

24 (3) Lawyers, accountants, investment bankers, and other
25 similar professionals in this state who perform services for an
26 out-of-state person in their professional capacity shall not be
27 considered to be conducting in-state business activity on behalf of

1 the out-of-state person.

2 (4) If none of the out-of-state person's business activities
3 in this state fall under the business activities described in
4 subsection (2) and its only contacts with this state are limited to
5 conducting any of the activities listed below, for less than 10
6 days, then those contacts will not be presumed to create nexus. If
7 an activity is listed in subdivisions (a) through (f) below but
8 also is described under subsection (2), then subsection (2) shall
9 control. If an out-of-state person's only in-state business
10 activity is listed in subdivision (g), that activity shall not be
11 considered as solicitation for the purposes of subsection (2).
12 Conducting any of the activities listed below for more than 10 days
13 does not necessarily create nexus. Whether nexus has been created
14 will depend on the facts and circumstances of the following in-
15 state business activities:

16 (a) Meeting with in-state suppliers of goods or services.

17 (b) In-state meeting with government representatives in their
18 official capacity.

19 (c) Attending occasional meetings, including, but not limited
20 to, board meetings, retreats, seminars, and conferences sponsored
21 by others.

22 (d) Holding recruiting or hiring events.

23 (e) Advertising in this state through various media.

24 (f) Renting customer lists to or from an in-state entity.

25 (g) Attending or participating at a trade show at which no
26 orders for goods are taken and no sales are made.

27 (5) Nexus shall be determined on a person-by-person basis. A

1 taxpayer that is a member of a unitary business group or a
2 consolidated taxpayer group not meeting the requirements of
3 subsections (1) through (4) shall not be deemed to have nexus with
4 this state based solely upon the in-state nexus of another member
5 of the taxpayer's unitary business group or consolidated taxpayer
6 group.

7 Sec. 23. (1) "Business license tax base" means a person's,
8 other than a tax-exempt person's, gross receipts, before allocation
9 or apportionment to this state, subject to the adjustments in this
10 section.

11 (2) To the extent included in gross receipts, deduct interest
12 and dividends received from obligations of the federal government.

13 (3) To the extent included in gross receipts, deduct dividends
14 and royalties received from foreign persons, including, but not
15 limited to, amounts determined under section 78 or sections 951 to
16 964 of the internal revenue code.

17 (4) To the extent included in gross receipts, subtract the
18 gross receipts that are attributable to another entity whose
19 business activities are taxable under this chapter or would be
20 subject to the tax under this chapter if the business activities
21 were in this state.

22 (5) The business license tax base of each unitary business
23 member is the sum of the gross receipts of each member of the
24 unitary business group less gross receipts received from other
25 members of the unitary business group.

26 (6) The business license tax base of each consolidated member
27 of the consolidated taxpayer group is the gross receipts of that

1 consolidated member less gross receipts received from other members
2 of the consolidated taxpayer group.

3 Sec. 24. (1) The business license tax base of a financial
4 organization means gross receipts, minus interest expense,
5 allocated or apportioned to this state.

6 (2) The business license tax base of a tax-exempt person means
7 the person's gross receipts derived from unrelated business
8 activity subject to the adjustments in section 23 to the extent
9 that the gross receipts are directly connected with unrelated
10 business activity, allocated or apportioned to this state.

11 CHAPTER 3

12 Sec. 30. (1) Except as otherwise provided in this act, there
13 is levied and imposed a business income tax on every person with
14 business activity and nexus within this state unless prohibited by
15 15 USC 381 to 384. The business income tax is imposed on the
16 business income tax base, after allocation or apportionment to this
17 state, at the rate of 3.05%.

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

21 Sec. 32. (1) The business income tax base means a person's
22 business income subject to the following adjustments, before
23 allocation or apportionment, and the adjustments in subsections (2)
24 through (4) after allocation or apportionment:

25 (a) Add interest income and dividends derived from obligations
26 or securities of states other than this state, in the same amount
27 that was excluded from federal taxable income, less the related

1 portion of expenses not deducted in computing federal taxable
2 income because of sections 265 and 291 of the internal revenue
3 code.

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

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

9 (d) To the extent included in federal taxable income, deduct
10 dividends and royalties received from foreign persons, including,
11 but not limited to, amounts determined under section 78 or sections
12 951 to 964 of the internal revenue code.

13 (e) To the extent included in federal taxable income, add the
14 loss or subtract the income from the business income tax base that
15 is attributable to another entity whose business activities are
16 taxable under this chapter or would be subject to the tax under
17 this chapter if the business activities were in this state.

18 (2) Add any nonbusiness income or loss allocated to this
19 state.

20 (3) Deduct from the allocated or apportioned business income
21 tax base any remaining business loss carryforward calculated under
22 section 23b(h) of former 1975 PA 228 to the extent not deducted in
23 tax years beginning before January 1, 2008. A carryforward may be
24 deducted in any tax year that is not more than 10 taxable years
25 after the loss year. If the taxpayer is a unitary business member,
26 the business loss carryforward under this subsection may only be
27 deducted against the business income tax base of that unitary

1 business member calculated as if it were not a member of the
2 unitary business group. If the taxpayer is a consolidated member,
3 the business loss carryforward under this subsection may only be
4 deducted against the business income tax base of that consolidated
5 member calculated as if it were not a member of the consolidated
6 taxpayer group unless the consolidated member filed as a member of
7 a consolidated taxpayer group under section 77 of former 1975 PA
8 228 for the year the loss was incurred.

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

18 (5) The business income tax base of a unitary business member
19 is the sum of the business income tax base of each member of the
20 unitary business member group less any items of income and related
21 deductions arising from transactions between members of the unitary
22 business group.

23 (6) The business income tax base of each consolidated member
24 of a consolidated taxpayer group is the business income tax base of
25 each member less any items of income and related deductions arising
26 from transactions between members of the consolidated taxpayer
27 group.

CHAPTER 4

Sec. 50. (1) The following are exempt from the taxes imposed by this act:

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

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

(c) That portion of the tax base as determined under sections 23 and 32 attributable to the production of agricultural goods by a person whose primary activity is the production of agricultural goods. "Production of agricultural goods" means commercial farming including, but not limited to, cultivation of the soil; growing and harvesting of an agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish, fur-bearing animals, or poultry; or turf or tree farming. Production of agricultural goods does not include the marketing at retail of agricultural goods except for sales of nursery stock grown by the seller and sold to a nursery dealer licensed under section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209.

1 (d) Except as provided in subsection (2), a farmers'
2 cooperative corporation organized within the limitations of section
3 98 of 1931 PA 327, MCL 450.98, that was at any time a tax-exempt
4 person under section 521 of the internal revenue code and that
5 would continue to be exempt under section 521 of the internal
6 revenue code except for either of the following activities:

7 (i) The corporation's repurchase from nonproducer customers of
8 portions or components of commodities the corporation markets to
9 those nonproducer customers and the corporation's subsequent
10 manufacturing or marketing of the repurchased portions or
11 components of the commodities.

12 (ii) The corporation's incidental or emergency purchases of
13 commodities from nonproducers to facilitate the manufacturing or
14 marketing of commodities purchased from producers.

15 (e) That portion of the tax base as determined under sections
16 23 and 32 attributable to the direct and indirect marketing
17 activities of a farmers' cooperative corporation organized within
18 the limitations of section 98 of 1931 PA 327, MCL 450.98, if those
19 marketing activities are provided on behalf of the members of that
20 corporation and are related to the members' direct sales of their
21 products to third parties or, for livestock, are related to the
22 members' direct or indirect sales of that product to third parties.
23 Marketing activities for a product that is not livestock are not
24 exempt under this subdivision if the farmers' cooperative
25 corporation takes physical possession of the product. As used in
26 this subdivision, "marketing activities" means activities that
27 include, but are not limited to, all of the following:

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

4 (ii) Dissemination of market information.

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

6 (iv) Promotion.

7 (v) Research relating to members' products.

8 (f) That portion of the tax base as determined under sections
9 23 and 32 attributable to the services provided by an attorney-in-
10 fact to a reciprocal insurer pursuant to chapter 72 of the
11 insurance code of 1956, 1956 PA 218, MCL 500.7200 to 500.7234.

12 (g) That portion of the tax base as determined under sections
13 23 and 32 attributable to a multiple employer welfare arrangement
14 that provides dental benefits only and that has a certificate of
15 authority under chapter 70 of the insurance code of 1956, 1956 PA
16 218, MCL 500.7001 to 500.7090.

17 (2) Subsection (1)(d) does not exempt a farmers' cooperative
18 corporation if the total dollar value of the farmers' cooperative
19 corporation's incidental and emergency purchases described in
20 subsection (1)(d)(ii) are equal to or greater than 5% of the
21 corporation's total purchases.

22 (3) Except as otherwise provided in this section, a farmers'
23 cooperative corporation shall exclude from the adjusted tax base
24 the revenue and expenses attributable to business transacted with
25 farmer or farmer cooperative corporation patrons to whom net
26 earnings are allocated in the form of patronage dividends as
27 defined in section 1388 of the internal revenue code. In computing

1 the adjusted tax base of a farmers' cooperative corporation, each
2 of the additions and deductions under chapters 2 and 3 shall be
3 multiplied by a fraction, the numerator of which is the gross
4 profit of the nonpatronage sourced business of the farmers'
5 cooperative corporation and the denominator of which is the gross
6 profits of the farmers' cooperative corporation. As used in this
7 subsection only, "farmers' cooperative corporation" means a
8 farmers' cooperative corporation organized within the limitations
9 of section 98 of 1931 PA 327, MCL 450.98.

10 Sec. 51. (1) For tax years beginning after December 31, 2007,
11 a taxpayer may claim a credit against the total amount of taxes
12 imposed by this act equal to 50% of the property taxes paid in the
13 same tax year by the person on tangible personal property.

14 (2) A person that is not otherwise required to file a return
15 under this act may claim the credit under this section.

16 (3) To qualify for the credit under this section for taxes
17 paid on an item of tangible personal property, a person that is
18 otherwise eligible to claim the credit allowed under this section
19 shall file a copy of the assessment or bill issued to and paid by
20 the taxpayer for items of tangible personal property that are
21 classified as tangible personal property for the location at which
22 the tangible personal property that is the basis of the credit
23 allowed under this section is located. An assessment or bill issued
24 by the department under 1905 PA 282, MCL 207.1 to 207.21, is not
25 required to be filed under this subsection.

26 (4) If the credit allowed under this section exceeds the tax
27 liability of the person for the tax year or if the person does not

1 have a tax liability under this act for the tax year, the excess or
2 the amount of the credit shall be refunded or paid to the person.
3 The state treasurer may establish a reserve account in the
4 department to fund and provide for payment of the amount of refunds
5 or payments for credits under this section that are attributable to
6 the fiscal years ending in the tax years for which credits are
7 claimed.

8 (5) The credit allowed under this section shall be calculated
9 after application of all other credits allowed under this act.

10 (6) As used in this section:

11 (a) "Personal property" means property classified as
12 assessable personal property under section 34c(3) of the general
13 property tax act, 1893 PA 206, MCL 211.34c, and property that is
14 taxable under 1905 PA 282, MCL 207.1 to 207.21.

15 (b) "Property taxes" means any of the following:

16 (i) Taxes collected under the general property tax act, 1893 PA
17 206, MCL 211.1 to 211.157.

18 (ii) Taxes collected under 1905 PA 282, MCL 207.1 to 207.21.

19 (iii) Taxes levied under 1974 PA 198, MCL 207.551 to 207.572.

20 (iv) Taxes levied under the obsolete property rehabilitation
21 act, 2000 PA 146, MCL 125.2781 to 125.2797.

22 (v) Taxes levied under the technology park development act,
23 1984 PA 385, MCL 207.702 to 207.718.

24 (vi) Any payments made by the taxpayer pursuant to a contract
25 with the Michigan strategic fund in connection with the creation of
26 a renaissance zone under the Michigan renaissance zone act, 1996 PA
27 376, MCL 125.2681 to 125.2696, to the extent that those payments

1 are made by the taxpayer to reimburse all taxing units for property
2 taxes that would otherwise be exempt under section 7ff of the
3 general property tax act, 1893 PA 206, MCL 211.7ff.

4 (vii) Taxes levied under the commercial rehabilitation act,
5 2005 PA 210, MCL 207.841 to 207.856.

6 (viii) Any payments made by a taxpayer pursuant to a contract
7 with an eligible local assessing district to the extent that those
8 payments are made to reimburse taxing units for property taxes that
9 would otherwise be payable under the general property tax act, 1893
10 PA 206, MCL 211.1 to 211.157. As used in this subparagraph,
11 "eligible local assessing district" means that term as defined in
12 section 9f of the general property tax act, 1893 PA 206, MCL
13 211.9f.

14 Sec. 52. (1) For a project for which a certificate of
15 completion or component completion certificate has been issued to a
16 qualified taxpayer before January 1, 2008 under section 38g of
17 former 1975 PA 228, all of the following apply:

18 (a) If a credit or any carryforward of a credit under that
19 certificate of completion or component completion certificate
20 exceeds a qualified taxpayer's or assignee's tax liability for the
21 most recent tax year beginning before January 1, 2008, the excess
22 shall not be refunded, but the qualified taxpayer or assignee may
23 carry forward the excess portion to offset the total tax liability
24 under this act for up to 10 years minus the number of years the
25 credit was claimed under section 38g of former 1975 PA 228, or
26 until used up, whichever occurs first.

27 (b) If the certificate of completion designates a schedule for

1 claiming annual credit amounts and specifies that certain amounts
2 may only be claimed after December 31, 2007, those amounts required
3 to be claimed after December 31, 2007 may be claimed as a credit
4 against the taxpayer's or assignee's tax liability under this act,
5 according to the schedule provided in the certificate of
6 completion. If an amount required to be claimed after December 31,
7 2007 exceeds the taxpayer's or assignee's total tax liability for
8 the year in which it may first be claimed, the excess shall not be
9 refunded, but the taxpayer or assignee may carry forward the excess
10 portion for up to 10 years, or until used up, whichever occurs
11 first.

12 (2) A qualified taxpayer listed on a preapproval letter issued
13 before January 1, 2008 under section 38g or 35c of former 1975 PA
14 228 for any project, other than a multiphase project, for which a
15 certificate of completion has not been issued before January 1,
16 2008 may claim a credit against the total tax liability imposed
17 under this act, subject to the following requirements:

18 (a) The project must be completed within 5 years after the
19 date of the preapproval letter.

20 (b) When the project is completed, the taxpayer shall file a
21 request for a certificate of completion with the Michigan economic
22 growth authority, which shall include documentation that the
23 project is completed, an accounting of the cost of the project, the
24 eligible investment of each taxpayer if there is more than 1
25 taxpayer eligible for a credit for the project, and, if the
26 taxpayer is not the owner or lessee of the eligible property on
27 which the eligible investment was made at the time the project is

1 completed, that the taxpayer was the owner or lessee of that
2 eligible property when all eligible investment of the taxpayer was
3 made.

4 (c) The chairperson of the Michigan economic growth authority
5 or his or her designee shall verify that the project is completed.
6 When the completion of the project is verified, a certificate of
7 completion shall be issued to each qualified taxpayer that has made
8 eligible investment on the eligible property. The certificate of
9 completion shall state all of the following:

10 (i) The total amount of all credits for the project, which
11 shall not exceed the maximum total of all credits listed in the
12 preapproval letter.

13 (ii) That the taxpayer is a qualified taxpayer.

14 (iii) The total cost of the project and the eligible investment
15 of each qualified taxpayer.

16 (iv) Each qualified taxpayer's credit amount.

17 (v) The qualified taxpayer's federal employer identification
18 number or the Michigan treasury number assigned to the taxpayer.

19 (vi) The project number.

20 (vii) If the total of all credits is more than \$10,000,000.00
21 but \$30,000,000.00 or less, the schedule by which the annual credit
22 amount shall be claimed by each taxpayer, which shall be equivalent
23 to 10% of the taxpayer's credit each year for 10 years.

24 (d) A credit claimed under this subsection shall be first
25 claimed in the tax year in which the certificate of completion is
26 issued. If the amount of the credit exceeds the taxpayer's or
27 assignee's total tax liability for the year in which it may first

1 be claimed, the excess shall not be refunded, but the taxpayer or
2 assignee may carry forward the excess portion for up to 10 years,
3 or until used up, whichever occurs first.

4 (3) A qualified taxpayer who has a preapproval letter issued
5 before January 1, 2008 under section 38g or 35c of former 1975 PA
6 228 for a multiphase project that has not been fully completed
7 before January 1, 2008 may claim a credit against the tax liability
8 imposed under this act, subject to the following requirements:

9 (a) When a component of the multiphase project is completed,
10 the taxpayer shall file a request for a component completion
11 certificate with the Michigan economic growth authority, which
12 shall include documentation that the component is complete, an
13 accounting of the cost of the component, and the eligible
14 investment for the component of each taxpayer eligible for a credit
15 for the project of which the component is a part.

16 (b) The chairperson of the Michigan economic growth authority
17 or his or her designee shall verify that the component is complete.
18 When the completion of the component is verified, a component
19 completion certificate shall be issued to each qualified taxpayer
20 that has made eligible investment on the eligible property. The
21 certificate of completion shall state all of the following:

22 (i) That the taxpayer is a qualified taxpayer.

23 (ii) The credit amount for the component.

24 (iii) The total cost of the component and the eligible
25 investment of each qualified taxpayer.

26 (iv) Each qualified taxpayer's credit amount.

27 (v) The credit amount of all component completion certificates

1 for the project previously issued under sections 38g and 35c of
2 former 1975 PA 228, which, together with the amount in subparagraph
3 (ii), shall not exceed the amount stated in the preapproval letter
4 for the project.

5 (vi) The qualified taxpayer's federal employer identification
6 number or the Michigan treasury number assigned to the taxpayer.

7 (vii) The project number.

8 (viii) If the total of all credits for the component is more
9 than \$10,000,000.00 but \$30,000,000.00 or less, the schedule by
10 which the annual credit amount shall be claimed by each taxpayer,
11 which shall be equivalent to 10% of the taxpayer's credit each year
12 for 10 years.

13 (c) If all components of a multiphase project are not
14 completed by 10 years after the date on which the preapproval
15 letter for the project was issued, the qualified taxpayer that
16 received the preapproval letter for the project shall pay to the
17 state treasurer, as a penalty, an amount equal to the sum of all
18 credits claimed and assigned for all components of the multiphase
19 project and no credits based on that multiphase project shall be
20 claimed after that date by the qualified taxpayer or any assignee
21 of the qualified taxpayer. The penalty under this subsection is
22 subject to interest on the amount of the credit claimed or assigned
23 determined individually for each component at the rate in section
24 23 of 1941 PA 122, MCL 205.23, beginning on the date that the
25 credit for that component was claimed or assigned.

26 (d) A credit claimed under this subsection shall be first
27 claimed in the tax year in which the component completion

1 certificate is issued. If the amount of the credit exceeds the
2 taxpayer's or assignee's tax liability for the year in which it may
3 first be claimed, the taxpayer or assignee may carry forward the
4 excess portion for up to 10 years, or until used up, whichever
5 occurs first.

6 (4) A credit allowed under this section may be assigned as
7 follows:

8 (a) A qualified taxpayer may assign all or a portion of a
9 credit. An assignee may subsequently assign a credit or any portion
10 of a credit to 1 or more assignees.

11 (b) If a certificate of completion or component completion
12 certificate requires a credit to be claimed pursuant to a schedule,
13 the taxpayer shall assign the annual credit amount for each tax
14 year separately. More than 1 annual credit amount may be assigned
15 to any 1 assignee, and the qualified taxpayer may assign all or a
16 portion of each annual credit amount to any assignee.

17 (c) A credit assignment or reassignment under this subsection
18 is irrevocable and shall be made by filing notice of the assignment
19 with the Michigan economic growth authority in the tax year in
20 which the assignment or reassignment is made. The notice shall
21 include the names of the parties assigning and accepting assignment
22 of the credit, the project number, and the amount of the credit
23 being assigned.

24 (5) Each qualified taxpayer or assignee that claims a credit
25 under this section shall attach a copy of the certificate of
26 completion or component completion certificate and, if the credit
27 was assigned, a copy of the assignment form, to the annual return

1 filed under this act on which the credit is claimed.

2 (6) The Michigan economic growth authority may amend project
3 descriptions and preapproval letters as necessary to enable
4 taxpayers to claim credits under this section, but may not increase
5 the maximum amount of all credits on a preapproval letter.

6 (7) A taxpayer shall not claim a credit under this section and
7 section 54(1)(c) based on the same costs.

8 (8) As used in this section:

9 (a) "Assignee" means a person to whom a credit allowed under
10 this section or section 38g of former 1975 PA 228 has been assigned
11 as authorized by this section or section 38g or 35e of former 1975
12 PA 228.

13 (b) "Eligible investment" means demolition, construction,
14 restoration, alteration, renovation, or improvement of buildings or
15 site improvements on eligible property and the addition of
16 machinery, equipment, and fixtures to eligible property after the
17 date that eligible activities on that eligible property have
18 started pursuant to a brownfield plan under the brownfield
19 redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672,
20 and after the date that the preapproval letter is issued, except
21 that the date that the preapproval letter is issued is not a
22 limitation for 1 project the construction of which began after
23 January 1, 2000 and before January 1, 2001 without the Michigan
24 economic growth authority determining that the project would not
25 occur in this state without the tax credit offered under this
26 section, if the costs of the eligible investment are not otherwise
27 reimbursed to the taxpayer or paid for on behalf of the taxpayer

1 from any source other than the taxpayer. The addition of leased
2 machinery, equipment, or fixtures to eligible property by a lessee
3 of the machinery, equipment, or fixtures is eligible investment if
4 the lease of the machinery, equipment, or fixtures has a minimum
5 term of 10 years or is for the expected useful life of the
6 machinery, equipment, or fixtures, and if the owner of the
7 machinery, equipment, or fixtures is not the qualified taxpayer
8 with regard to that machinery, equipment, or fixtures. The cost of
9 eligible investment for leased machinery, equipment, or fixtures is
10 the cost of that property had the property been purchased minus the
11 lessor's estimate, made at the time the lease is entered into, of
12 the market value the property will have at the end of the lease.

13 (c) "Eligible property" means that term as defined in the
14 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
15 to 125.2672, except that the term also includes:

16 (i) Property identified under a brownfield plan that was used
17 or is currently used for commercial, industrial, or residential
18 purposes and that is 1 of the following:

19 (A) Property for which eligible activities are identified
20 under the brownfield plan, which is in a qualified local
21 governmental unit, and which is a facility, functionally obsolete,
22 or blighted.

23 (B) Property that is not in a qualified local governmental
24 unit but is within a downtown development district established
25 under 1975 PA 197, MCL 125.1651 to 125.1681, and is functionally
26 obsolete or blighted, and a component of the project on that
27 eligible property is 1 or more of the following:

1 (I) Infrastructure improvements that directly benefit the
2 eligible property.

3 (II) Demolition of structures that is not response activity
4 under section 20101 of the natural resources and environmental
5 protection act, 1994 PA 451, MCL 324.20101.

6 (III) Lead or asbestos abatement.

7 (IV) Site preparation that is not response activity under
8 section 20101 of the natural resources and environmental protection
9 act, 1994 PA 451, MCL 324.20101.

10 (C) Property for which eligible activities are identified
11 under the brownfield plan, which is not in a qualified local
12 governmental unit, and which is a facility.

13 (ii) Parcels that are adjacent or contiguous to the eligible
14 property if the development of the adjacent or contiguous parcels
15 is estimated to increase the captured taxable value of the property
16 or tax reverted property owned or under the control of a land bank
17 fast track authority pursuant to the land bank fast track act, 2003
18 PA 258, MCL 124.751 to 124.774.

19 (iii) To the extent included in the brownfield plan, personal
20 property located on the eligible property.

21 (iv) Eligible property does not include qualified agricultural
22 property exempt under section 7ee of the general property tax act,
23 1893 PA 206, MCL 211.7ee, from the tax levied by a local school
24 district for school operating purposes to the extent provided under
25 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

26 (d) "Michigan economic growth authority" means the Michigan
27 economic growth authority created in the Michigan economic growth

1 authority act, 1995 PA 24, MCL 207.801 to 207.810.

2 (e) "Multiphase project" means a project that has more than 1
3 component but not more than 20 components, each of which can be
4 completed separately.

5 (f) "Project" means the eligible investment identified in a
6 preapproval letter issued before January 1, 2008 under section 38g
7 or 35c of former 1975 PA 228.

8 (g) "Qualified local governmental unit" means that term as
9 defined in the obsolete property rehabilitation act, 2000 PA 146,
10 MCL 125.2781 to 125.2797.

11 (h) "Qualified taxpayer" means a taxpayer that meets both of
12 the following criteria at the time the eligible investment of the
13 taxpayer is made:

14 (i) Owns or leases eligible property.

15 (ii) Certifies that, except as otherwise provided in this
16 subparagraph, the department of environmental quality has not sued
17 or issued a unilateral order to the taxpayer pursuant to part 201
18 of the natural resources and environmental protection act, 1994 PA
19 451, MCL 324.20101 to 324.20142, to compel response activity on or
20 to the eligible property, or expended any state funds for response
21 activity on or to the eligible property and demanded reimbursement
22 for those expenditures from the qualified taxpayer. However, if the
23 taxpayer has completed all response activity required by part 201
24 of the natural resources and environmental protection act, 1994 PA
25 451, MCL 324.20101 to 324.20142, is in compliance with any deed
26 restriction or administrative or judicial order related to the
27 required response activity, and has reimbursed the state for all

1 costs incurred by the state related to the required response
2 activity, the taxpayer meets the criteria under this subparagraph.

3 Sec. 53. (1) Except as provided in subsection (2), a taxpayer
4 that is a business that has been located and conducting business
5 activity within a renaissance zone since before January 1, 2008 may
6 claim a credit against the total amount of taxes imposed by this
7 act for the tax year, equal to the following:

8 (a) Except as provided in subdivision (b), for a business that
9 first locates and begins conducting business activity within a
10 renaissance zone after November 30, 2002, the lesser of the
11 following:

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

14 (ii) Ten percent of adjusted services performed in a designated
15 renaissance zone.

16 (b) For a business that is located and conducting business
17 activity within a renaissance zone before December 1, 2002 or a
18 business that before December 1, 2002 has entered into a purchase
19 agreement or lease agreement for real or personal property to be
20 used for business activity within a renaissance zone, the greater
21 of the following:

22 (i) The amount calculated under subdivision (a) (i) or (ii),
23 whichever is less.

24 (ii) The lesser of the following:

25 (A) The amount calculated under subdivision (a) (i).

26 (B) The credit allowed under this section for the tax year
27 beginning in 2002 plus 2% of the increase in the amount calculated

1 under subsection (11) (a) (i) for the tax year over the amount
2 calculated under subsection (11) (a) (i) for the tax year beginning
3 in 2002.

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

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

9 (4) The tax liability used to determine the credit under this
10 section is the taxpayer's tax liability before the calculation of
11 all other credits under this act.

12 (5) The credit allowed under this section shall not exceed the
13 tax liability of the taxpayer for the tax year.

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

24 (7) To be eligible for the credit allowed under this section,
25 an otherwise qualified taxpayer shall file an annual return under
26 this act.

27 (8) Any portion of the taxpayer's tax liability that is

1 attributable to business activity related to the operation of a
2 casino, and business activity that is associated or affiliated with
3 the operation of a casino, including, but not limited to, the
4 operation of a parking lot, hotel, motel, or retail store, shall
5 not be used to calculate a credit under this section. As used in
6 this subsection, "casino" means a casino regulated by this state
7 pursuant to the Michigan gaming control and revenue act, the
8 Initiated Law of 1996, MCL 432.201 to 432.226.

9 (9) During the last 3 years that the taxpayer is eligible for
10 a credit under this section, the credit shall be reduced by the
11 following percentages:

12 (a) For the tax year that is 2 years before the final year of
13 designation as a renaissance zone, the percentage shall be 25%.

14 (b) For the tax year immediately preceding the final year of
15 designation as a renaissance zone, the percentage shall be 50%.

16 (c) For the final tax year of designation as a renaissance
17 zone, the percentage shall be 75%.

18 (10) A taxpayer is not eligible for a credit under this
19 section for the tax year if any of the following apply:

20 (a) The taxpayer is delinquent on December 31 of the prior tax
21 year for tax due for the prior tax year under any of the taxes
22 listed in section 10(1)(a) of the Michigan renaissance zone act,
23 1996 PA 376, MCL 125.2690, subject to the exception described in
24 section 10(4) of the Michigan renaissance zone act, 1996 PA 376,
25 MCL 125.2690.

26 (b) The taxpayer is substantially delinquent as defined in a
27 written policy by the qualified local governmental unit in which

1 the renaissance zone is located on December 31 of the prior tax
2 year under any of the taxes listed in section 10(1)(b) of the
3 Michigan renaissance zone act, 1996 PA 376, MCL 125.2690.

4 (c) The taxpayer is an individual who is a resident of a
5 renaissance zone and the department determines that the aggregate
6 state and local tax revenue forgone as a result of all exemptions,
7 deductions, or credits granted under the Michigan renaissance zone
8 act, 1996 PA 376, MCL 125.2681 to 125.2696, plus the credits
9 granted under this section, to the taxpayer reaches \$10,000,000.00.

10 (d) The taxpayer is a casino located and conducting business
11 activity within a renaissance zone. As used in this subsection,
12 "casino" means a casino or a parking lot, hotel, motel, or retail
13 store owned or operated by a casino, an affiliate, or an affiliated
14 company, regulated by this state pursuant to the Michigan gaming
15 control and revenue act, the Initiated Law of 1996, MCL 432.201 to
16 432.226.

17 (11) As used in this section:

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

20 (i) Except as provided in subparagraph (ii), the sum of the
21 taxpayer's payroll for services performed in a designated
22 renaissance zone plus an amount equal to any deduction for
23 depreciation, amortization, or accelerated write-off related to the
24 cost of tangible assets, in arriving at federal taxable income.

25 (ii) For a partnership, limited liability company, S
26 corporation, or individual, the amount determined under
27 subparagraph (i) plus the product of the following as related to

1 the taxpayer if greater than zero:

2 (A) Business income.

3 (B) The apportionment factor.

4 (C) The renaissance zone business activity factor.

5 (b) "Delinquent" means assessed, unpaid, and not subject to
6 administrative or judicial review or appeal.

7 (c) "New property" means property that has not been subject
8 to, or exempt from, the collection of taxes under the general
9 property tax act, 1896 PA 206, MCL 211.1 to 211.157, and has not
10 been subject to, or exempt from, ad valorem property taxes levied
11 in another state, except that receiving an exemption as inventory
12 property does not disqualify property.

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

15 (e) "Renaissance zone" means that term as defined in the
16 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
17 125.2696.

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

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

1 Sec. 54. (1) Except as otherwise provided in this section, a
2 taxpayer that is an authorized business and that has entered into a
3 written agreement with the Michigan economic growth authority
4 before January 1, 2008 for a tax credit or credits under the
5 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
6 207.810, may credit against the total amount of tax imposed by this
7 act the following amounts as certified each year by the Michigan
8 economic growth authority:

9 (a) An amount certified each year by the Michigan economic
10 growth authority, which shall not exceed the payroll of the
11 authorized business attributable to employees who perform qualified
12 new jobs multiplied by the tax rate.

13 (b) An amount certified each year by the Michigan economic
14 growth authority equal to the tax liability attributable to
15 authorized business activity.

16 (c) An amount certified each year by the Michigan economic
17 growth authority that is 1 of the following:

18 (i) For an eligible business under section 8(5)(a) of the
19 Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an
20 amount that is not more than 50% of 1 or both of the following as
21 determined by the Michigan economic growth authority:

22 (A) An amount determined under the Michigan economic growth
23 authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not
24 exceed the payroll of the eligible taxpayer attributable to
25 employees who perform retained jobs multiplied by the tax rate for
26 the tax year.

27 (B) The tax liability attributable to the eligible taxpayer's

1 business activity multiplied by a fraction the numerator of which
2 is the ratio of the value of new capital investment to all of the
3 taxpayer's property located in this state plus the ratio of the
4 taxpayer's payroll attributable to retained jobs to all of the
5 taxpayer's payroll in this state and the denominator of which is 2.

6 (ii) For an eligible business under section 8(5)(b) of the
7 Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an
8 amount that is not more than 1 or both of the following as
9 determined by the Michigan economic growth authority:

10 (A) An amount determined under the Michigan economic growth
11 authority act, MCL 207.801 to 207.810, that does not exceed the
12 payroll of the eligible taxpayer attributable to employees who
13 perform retained jobs multiplied by the tax rate for the tax year.

14 (B) The tax liability attributable to the eligible taxpayer's
15 business activity multiplied by a fraction the numerator of which
16 is the ratio of the value of capital investment to all of the
17 taxpayer's property located in this state plus the ratio of the
18 taxpayer's payroll attributable to retained jobs to all of the
19 taxpayer's payroll in this state and the denominator of which is 2.

20 (2) A taxpayer shall not claim a credit under subsection (1)
21 unless the Michigan economic growth authority has issued a
22 certificate to the taxpayer. The taxpayer shall attach the
23 certificate to the return filed under this act on which a credit
24 under this section is claimed.

25 (3) The certificate required by subsection (2) shall state all
26 of the following:

27 (a) That the taxpayer is an authorized business.

1 (b) The amount of the credit or credits under this section for
2 the authorized business for the designated tax year, and the
3 subsection under which each credit is being authorized.

4 (c) The taxpayer's federal employer identification number or
5 the Michigan treasury number assigned to the taxpayer.

6 (4) A taxpayer shall not claim a credit under subsection (1)
7 unless the initial certificate as required in subsection (2) is
8 issued before January 1, 2010.

9 (5) The Michigan economic growth authority shall not issue
10 certificates under subsection (2) to a taxpayer in excess of either
11 of the following:

12 (a) The total amount of tax credits determined for the
13 taxpayer under section 8(2) of the Michigan economic growth
14 authority act, 1995 PA 24, MCL 207.808, minus the amount of tax
15 credits that have previously been certified for the taxpayer under
16 this section, or sections 37c, 37d, or 38g(20) of former 1975 PA
17 228.

18 (b) The duration of tax credits determined for the taxpayer
19 under section 8(2) of the Michigan economic growth authority act,
20 1995 PA 24, MCL 207.808, minus the number of years that tax credits
21 have previously been certified for the taxpayer under this section,
22 or sections 37c, 37d, or 38g(20) of former 1975 PA 228.

23 (6) For a credit or credits under subsection (1)(a), all of
24 the following apply:

25 (a) An affiliated group, a controlled group of corporations as
26 defined in section 1563 of the internal revenue code and further
27 described in 26 CFR 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an

1 entity under common control as defined by the internal revenue code
2 shall claim only 1 credit for each tax year for each expansion or
3 location evidenced by a written agreement whether or not a unitary
4 business group or consolidated taxpayer group return is filed.

5 (b) If the credit allowed exceeds the tax liability of the
6 taxpayer for the tax year, the excess shall be refunded to the
7 taxpayer.

8 (7) For a credit or credits under subsection (1)(b), all of
9 the following apply:

10 (a) The tax liability attributable to authorized business
11 activity is the tax liability imposed by this act multiplied by
12 either of the following fractions as appropriate:

13 (i) For an authorized business locating a facility in this
14 state, a fraction the numerator of which is the ratio of the value
15 of the facility to all of the taxpayer's property located in this
16 state plus the ratio of the taxpayer's payroll attributable to
17 qualified new jobs to all of the taxpayer's payroll in this state
18 and the denominator of which is 2.

19 (ii) For an authorized business expanding at an existing site,
20 a fraction the numerator of which is the ratio of the value of the
21 new property added to the site as part of that expansion to all of
22 the taxpayer's property located in this state plus the ratio of the
23 taxpayer's payroll attributable to qualified new jobs to all of the
24 taxpayer's payroll in this state and the denominator of which is 2.

25 (b) If the credit for the tax year and any unused carryforward
26 of the credit exceed the taxpayer's tax liability for the tax year,
27 that portion that exceeds the tax liability for the tax year shall

1 not be refunded but may be carried forward to offset tax liability
2 in subsequent tax years for 10 years or until used up, whichever
3 occurs first.

4 (8) For a credit or credits under subsection (1)(c), all of
5 the following apply:

6 (a) An affiliated group, a controlled group of corporations as
7 defined in section 1563 of the internal revenue code and further
8 described in 26 CFR 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an
9 entity under common control as defined by the internal revenue code
10 shall claim only 1 credit for each tax year based on each written
11 agreement whether or not a combined or consolidated return is
12 filed.

13 (b) If the credit allowed under subsection (1)(c)(i)(B) or
14 (ii)(B) for the tax year and any unused carryforward of the credit
15 allowed by subsection (1)(c)(i)(B) or (ii)(B) exceed the taxpayer's
16 tax liability for the tax year, that portion that exceeds the tax
17 liability for the tax year shall not be refunded, but may be
18 carried forward to offset tax liability in subsequent tax years for
19 10 years or until used up, whichever occurs first.

20 (c) If the credit allowed under subsection (1)(c)(i)(A) or
21 (ii)(A) exceeds the tax liability of the eligible taxpayer for the
22 tax year, the excess shall be refunded to the eligible taxpayer.

23 (d) A taxpayer shall not claim a credit under section 52 and
24 subsection (1)(c) based on the same costs.

25 (9) If any unused carryforward of a credit or credits under
26 section 37c(12), 37d(5), or 38g(24) of former 1975 PA 228 exceeds
27 the taxpayer's tax liability for the most recent tax year beginning

1 before January 1, 2008, the excess shall not be refunded, but the
2 taxpayer may carry forward the excess portion to offset tax
3 liability under this act for up to 10 years minus the number of
4 years the credit was claimed under section 37c(12), 37d(5), or
5 38g(24) of former 1975 PA 228, or until used up, whichever occurs
6 first.

7 (10) If the Michigan economic growth authority or a designee
8 of the Michigan economic growth authority requests that a taxpayer
9 who claims any credit under this section get a statement prepared
10 by a certified public accountant verifying that the actual number
11 of new jobs created is the same number of new jobs used to
12 calculate the credit under this section, the taxpayer shall get
13 that statement and attach that statement to its annual return under
14 this act on which the credit under this section is claimed.

15 (11) A taxpayer that claims a credit under subsection (1)(a)
16 or (b), or section 37c(1) or 37d of former 1975 PA 228, that has an
17 agreement with the Michigan economic growth authority based on
18 qualified new jobs as defined in section 3(n)(ii) of the Michigan
19 economic growth authority act, 1995 PA 24, MCL 207.803, and that
20 removes from this state 51% or more of those qualified new jobs
21 within 3 years after the first year in which the taxpayer claims a
22 credit described in this subsection shall pay to the department not
23 later than 12 months after those qualified new jobs are removed
24 from this state an amount equal to the total of all credits
25 described in this subsection that were claimed by the taxpayer.

26 (12) A credit shall not be taken under this section unless the
27 original or amended written agreement provides that the provision

1 of that credit is contingent upon the taxpayer's fulfillment of its
2 obligations under the agreement. Neither the taxpayer's obligations
3 under the agreement nor the total amount or duration of tax credits
4 shall be amended.

5 (13) As used in this section:

6 (a) "Authority" or "Michigan economic growth authority" means
7 the Michigan economic growth authority created in the Michigan
8 economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

9 (b) "Authorized business", "facility", "full-time job",
10 "qualified high-technology business", and "written agreement" mean
11 those terms as defined in the Michigan economic growth authority
12 act, 1995 PA 24, MCL 207.801 to 207.810.

13 (c) "Authorized business activity" means the business activity
14 of an authorized business certified under the Michigan economic
15 growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

16 (d) "Eligible taxpayer" means an eligible business that meets
17 the criteria under section 8(5) of the Michigan economic growth
18 authority act, 1995 PA 24, MCL 207.808.

19 (e) "Payroll" means the total salaries and wages before
20 deducting any personal or dependency exemptions.

21 (f) "Qualified new jobs" means 1 or more of the following:

22 (i) The average number of full-time jobs at a facility of an
23 authorized business for a tax year in excess of the average number
24 of full-time jobs the authorized business maintained in this state
25 prior to the expansion or location as that is determined under the
26 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
27 207.810.

(ii) The average number of full-time jobs at a facility created by an eligible taxpayer within 120 days before becoming an authorized business, that is in excess of the average number of full-time jobs that the business maintained in this state 120 days before becoming an authorized business, as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(g) "Tax rate" means the rate imposed under sections 51, 51d, and 51e of the income tax act of 1967, 1967 PA 281, MCL 206.51, 206.51d, and 206.51e, for the tax year in which the tax year of the taxpayer for which the credit is being computed begins.

CHAPTER 5

Sec. 60. (1) Each insurance company and each formerly authorized insurance company with respect to premiums received while an insurance company in this state shall pay to the department a tax calculated as the product of .010735 times the insurance company's tax base as determined pursuant to section 61.

(2) The following are exempt from the tax imposed by this section:

(a) Beginning January 1, 2008 and after being apportioned under section 61(4), the first \$130,000,000.00 of disability insurance premiums written in this state, other than credit insurance and disability income insurance premiums, of each insurance company subject to tax under this act. This exemption shall be reduced by \$2.00 for each \$1.00 by which the insurance company's gross premiums from insurance carrier services in this state and outside this state exceed \$180,000,000.00.

1 (b) That portion of the tax base attributable to the services
2 provided by an attorney-in-fact to a reciprocal insurer pursuant to
3 chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200
4 to 500.7234.

5 (c) For tax years that begin after December 31, 2006, that
6 portion of the tax base attributable to a multiple employer welfare
7 arrangement that provides dental benefits only and that has a
8 certificate of authority under chapter 70 of the insurance code of
9 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

10 Sec. 61. (1) Except as otherwise provided in this section, the
11 tax base of an insurance company is the insurance company's
12 adjusted receipts as apportioned under subsection (3).

13 (2) The tax calculated on an insurance company under this act
14 is in lieu of all other privilege or franchise fees, income taxes,
15 or other taxes imposed by any other law of this state, except taxes
16 levied on real and personal property and except as otherwise
17 provided in the insurance code of 1956, 1956 PA 218, MCL 500.100 to
18 500.8302.

19 (3) The tax base of an insurance company doing business both
20 within and outside of this state or partly within and outside of
21 this state shall be that portion of the tax base of the taxpayer
22 that the gross direct premiums received for insurance upon property
23 or risk in this state, deducting premiums upon policies not taken
24 and returned premiums on canceled policies from Michigan, bears to
25 the gross direct premiums received for insurance upon property or
26 risk, deducting premiums upon policies not taken and returned
27 premiums on canceled policies, everywhere.

1 (4) As used in this section:

2 (a) "Adjusted receipts" means, except as provided in
3 subdivision (b), the sum of all of the following:

4 (i) Rental and royalty receipts from a person that is not
5 either of the following:

6 (A) An affiliated insurance company.

7 (B) An insurance agent of the taxpayer licensed under chapter
8 12 of the insurance code of 1956, 1956 PA 218, MCL 500.1200 to
9 500.1247.

10 (ii) Gross direct premiums received for insurance on property
11 or risk, deducting premiums on policies not taken and returned
12 premiums on canceled policies.

13 (iii) Receipts from administrative services only contracts with
14 a person who is not an affiliated insurance company or an
15 affiliated nonprofit corporation.

16 (iv) Receipts from business activity other than the business of
17 insurance. As used in this subparagraph, "business of insurance"
18 means any activity related to the sale of insurance, payment of
19 claims, or claims handling, on policies written by the taxpayer.

20 (v) Charges not including interest charges attributable to
21 premiums paid on a deferred or installment basis.

22 (vi) Receipts from servicing carrier fees received from the
23 Michigan auto insurance placement facility pursuant to chapter 33
24 of the insurance code of 1956, 1956 PA 218, MCL 500.3301 to
25 500.3390.

26 (b) Adjusted receipts do not include any of the following:

27 (i) Receipts from interest, dividends, or proceeds from the

1 sale of assets.

2 (ii) Receipts, other than receipts described in subsection
3 (3)(a)(i) or (ii), from an affiliated insurance company, an
4 affiliated nonprofit corporation, an employee of the taxpayer, or
5 an insurance agent of the taxpayer licensed under chapter 12 of the
6 insurance code of 1956, 1956 PA 218, MCL 500.1200 to 500.1247.

7 (iii) Receipts on the sale of annuities.

8 (iv) Receipts on all reinsurance transactions.

9 (c) "Affiliated insurance company" means an insurance company
10 that is a member of an affiliated group with the taxpayer or, if
11 the insurance company does not issue stock, 50% or more of the
12 members of that insurance company's board of directors are members
13 of the taxpayer's board of directors.

14 (d) "Affiliated nonprofit corporation" means a nonprofit
15 corporation, of which 80% or more of the members of the board of
16 directors are members of the taxpayer's board of directors.

17 Sec. 62. (1) An insurance company may claim a credit against
18 the tax imposed under this act in the following amounts, but not to
19 exceed the limitations provided in this section:

20 (a) Amounts paid to the Michigan worker's compensation
21 placement facility pursuant to chapter 23 of the insurance code of
22 1956, 1956 PA 218, MCL 500.2301 to 500.2352.

23 (b) Amounts paid to the Michigan basic property insurance
24 association pursuant to chapter 29 of the insurance code of 1956,
25 1956 PA 218, MCL 500.2901 to 500.2954.

26 (c) Amounts paid to the Michigan automobile insurance
27 placement facility pursuant to chapter 33 of the insurance code of

1 1956, 1956 PA 218, MCL 500.3301 to 500.3390.

2 (d) Amounts paid to the property and casualty guaranty
3 association pursuant to chapter 79 of the insurance code of 1956,
4 1956 PA 218, MCL 500.7901 to 500.7949.

5 (e) Amounts paid to the Michigan life and health guaranty
6 association pursuant to chapter 77 of the insurance code of 1956,
7 1956 PA 218, MCL 500.7701 to 500.7780.

8 (2) For each tax year, the total credit provided in subsection
9 (1) for all insurance companies shall not exceed the product of the
10 remainder obtained by deducting the sum of the statutory amount
11 certified by the director of management and budget in 2007 pursuant
12 to section 22c(3) of former 1975 PA 228, plus the credits allowed
13 under section 63 from the total tax liability of domestic insurance
14 companies for the preceding year under this act or former 1975 PA
15 228 but before applying any credits multiplied by a fraction the
16 numerator of which is the total assessments paid by all insurance
17 companies to the associations and facilities described in
18 subsection (1) and the denominator of which is the total
19 assessments paid by domestic insurance companies to the
20 associations and facilities described in subsection (1). The
21 statutory amount certified by the director of management and budget
22 in 2007 pursuant to section 22c(3) of former 1975 PA 228 subtrahend
23 shall be adjusted annually in proportion to the change in total
24 general fund/general purpose revenues for the immediately preceding
25 year, as certified by the director of management and budget.

26 (3) For each tax year, the credit for each insurance company
27 shall not exceed an amount equal to the product of the total credit

1 limitation calculated under subsection (2) multiplied by a fraction
2 the numerator of which is the insurance company's total assessments
3 paid to the associations and facilities described in subsection (1)
4 and the denominator of which is the total assessments paid by all
5 insurance companies to the associations and facilities described in
6 subsection (1).

7 (4) The tax liability and assessments of an insurance company
8 from the immediately preceding tax year shall be used in
9 calculating the credits allowed under this section for each tax
10 year.

11 (5) Not later than June 30 of each year after 2007, the state
12 treasurer shall certify the amounts needed to calculate the credits
13 allowed under this section for the insurance company tax year
14 ending in that calendar year.

15 Sec. 63. An insurance company shall be allowed a credit
16 against the tax imposed under this act in an amount equal to 50% of
17 the examination fees paid by the insurance company during the tax
18 year pursuant to section 224 of the insurance code of 1956, 1956 PA
19 218, MCL 500.224.

20 Sec. 64. (1) For amounts paid pursuant to section 352 of the
21 worker's disability compensation act of 1969, 1969 PA 317, MCL
22 418.352, an insurance company subject to the worker's disability
23 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, may
24 claim a credit against the tax imposed under this act for the tax
25 year in an amount equal to the amount paid during that tax year by
26 the insurance company pursuant to section 352 of the worker's
27 disability compensation act of 1969, 1969 PA 317, MCL 418.352, as

1 certified by the director of the bureau of worker's disability
2 compensation pursuant to section 391(6) of the worker's disability
3 compensation act of 1969, 1969 PA 317, MCL 418.391.

4 (2) An insurance company claiming a credit under this section
5 may claim a portion of the credit allowed under this section equal
6 to the payments made during a calendar quarter pursuant to section
7 352 of the worker's disability compensation act of 1969, 1969 PA
8 317, MCL 418.352, against the estimated tax payments made under
9 section 90. Any credit in excess of an estimated payment shall be
10 refunded to the insurance company on a quarterly basis within 60
11 calendar days after receipt of a properly completed estimated tax
12 return. Any subsequent increase or decrease in the amount claimed
13 for payments made by the insurance company shall be reflected in
14 the amount of the credit taken for the calendar quarter in which
15 the amount of the adjustment is finalized.

16 (3) The credit under this section is in addition to any other
17 credits the insurance company is eligible for under this act.

18 (4) Any amount of the credit under this section that is in
19 excess of the tax liability of the insurance company for the tax
20 year shall be refunded, without interest, by the department to the
21 insurance company within 60 calendar days of receipt of a properly
22 completed annual return required under this act.

23 Sec. 65. (1) An insurance company is subject to the tax under
24 this act or section 476a of the insurance code of 1956, 1956 PA
25 218, MCL 500.476a, if applicable, whichever is greater.

26 (2) An insurance company's tax year is the calendar year.

27 (3) An insurance company shall file the annual return required

1 under this act before the March 2 immediately succeeding the end of
2 the tax year.

3 (4) For the purpose of calculating an estimated payment
4 required under section 90, the greater of the amount of tax imposed
5 on an insurance company under this act or under section 476a of the
6 insurance code of 1956, 1956 PA 218, MCL 500.476a, shall be
7 considered the insurance company's tax liability for the
8 immediately preceding tax year.

9 (5) The requirements of section 28(1)(f) of 1941 PA 122, MCL
10 205.28, that prohibit an employee or authorized representative of,
11 a former employee or authorized representative of, or anyone
12 connected with the department from divulging any facts or
13 information obtained in connection with the administration of a
14 tax, do not apply to disclosure of a tax return required under this
15 section.

16 CHAPTER 6

17 Sec. 70. (1) Except as otherwise provided in this chapter, the
18 entire business license tax base or business income tax base of a
19 taxpayer whose business activities are confined solely to this
20 state shall be allocated to this state.

21 (2) To the extent that the following are included as
22 nonbusiness income under chapter 3, that nonbusiness income shall
23 be allocated as follows:

24 (a) Net rents and royalties from real property located in this
25 state are allocable to this state.

26 (b) Net rents and royalties from tangible personal property
27 are allocable to this state as follows:

1 (i) If and to the extent that the property is utilized in this
2 state.

3 (ii) In their entirety if the taxpayer's commercial domicile is
4 in this state and the taxpayer is not organized under the laws of
5 or taxable in another state in which the property is utilized.

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

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

20 (d) A capital gain or loss from sales of tangible personal
21 property is allocable to this state if the property had a situs in
22 this state at the time of the sale or if the taxpayer's commercial
23 domicile is in this state and the taxpayer is not taxable in the
24 state in which the property had a situs.

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

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

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

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

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

25 Sec. 71. The business license tax base or business income tax
26 base of a taxpayer whose business activities are taxable both
27 within and outside of this state is taxable in another state in

1 either of the following circumstances:

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

6 (b) That state has jurisdiction to subject the taxpayer to 1
7 or more of the taxes listed in subdivision (a) regardless of
8 whether that state does or does not subject the taxpayer to that
9 tax.

10 Sec. 72. All of the business license tax base or business
11 income tax base, other than the tax base of a financial
12 organization or the tax base derived principally from
13 transportation services or specifically allocated, shall be
14 apportioned to this state by multiplying the tax base by the sales
15 factor calculated under section 73.

16 Sec. 73. (1) Except as otherwise provided in this section and
17 in section 80, the sales factor is a fraction, the numerator of
18 which is the total sales of the taxpayer in this state during the
19 tax year and the denominator of which is the total sales of the
20 taxpayer everywhere during the tax year.

21 (2) The sales factor for a unitary business member is a
22 fraction, the numerator of which is the total sales of the unitary
23 business member in this state during the tax year and the
24 denominator of which is the total sales of the unitary business
25 group everywhere during the tax year. In the case of a unitary
26 business group composed exclusively of taxpayers using the special
27 apportionment factors under section 77, 78, or 79 of this act, the

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

8 (3) The sales factor for a consolidated member is calculated
9 under subsection (1) excluding sales between consolidated members.
10 The factors of each consolidated member are added together to total
11 1 sales factor for the consolidated taxpayer group. The allocation
12 of sales to determine the numerator of the sales factor is made as
13 though each corporation is filing a separate return.

14 (4) The sales factor for a foreign person as defined under
15 section 10 is a fraction, the numerator of which is the total sales
16 of the taxpayer in this state during the tax year and the
17 denominator of which is the total sales of the taxpayer in the
18 United States during the tax year.

19 Sec. 74. Total sales of the taxpayer in this state are
20 determined as follows:

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

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

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

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

1 state in which it is registered.

2 Sec. 75. (1) Except as otherwise provided under section 76,
3 sales from the performance of services are in this state if the
4 receipts are derived from customers within this state or if the
5 receipts are otherwise attributable to this state's marketplace.

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

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

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

1 underwriting of securities. If receipts from brokerage services can
2 be associated with a particular customer, but it is impractical to
3 associate the receipts with the address of the customer, then the
4 address of the customer shall be presumed to be the address of the
5 branch office that generates the transactions for the customer.

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

27 (i) The numerator of the fraction is the average of the sum of

1 the beginning-of-year and end-of-year number of shares owned by the
2 regulated investment company shareholders who have their domicile
3 in this state.

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

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

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

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

1 determine the amount of sales attributable to this state.

2 (3) As used in this section:

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

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

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

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

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

18 Sec. 76. (1) Interest from loans secured by real property is
19 in this state if the property is located within this state or if
20 the property is located both within this state and 1 or more other
21 states, if more than 50% of the fair market value of the real
22 property is located within this state, or if more than 50% of the
23 fair market value of the real property is not located within any 1
24 state, if the borrower is located in this state. The determination
25 of whether the real property securing a loan is located within this
26 state shall be made as of the time the original agreement was made
27 and any and all subsequent substitutions of collateral shall be

1 disregarded.

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

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

8 (a) The amount of receipts from the sale of loans secured by
9 real property is in this state if the property is in this state or
10 the property is located both within this state and 1 or more other
11 states and more than 50% of the fair market value of the real
12 property is located within this state, or if more than 50% of the
13 fair market value of the real property is not located in any 1
14 state, then if the borrower is located in this state.

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

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

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

1 issuer's reimbursement fees paid to another for charges made by its
2 cardholders, are in this state if the commercial domicile of the
3 merchant is in this state.

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

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

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

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

12 Sec. 77. (1) The tax base of a taxpayer whose business
13 activities consist of transportation services rendered either
14 entirely within or partly within and partly outside of this state
15 shall be determined as provided under this section and section 78.

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

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

1 base of the taxpayer that is equal to the sum of its passenger
2 miles and ton mile fractions, separately computed and individually
3 weighted by the ratio of receipts from passenger transportation to
4 total receipts from all transportation, and by the ratio of
5 receipts from freight transportation to total receipts from all
6 transportation, respectively.

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

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

20 Sec. 78. (1) The tax base attributable to this state of a
21 taxpayer whose business activity consists of the transportation of
22 oil by pipeline, is the tax base of the taxpayer in the ratio that
23 the barrel miles transported in this state bear to the barrel miles
24 transported by the taxpayer everywhere.

25 (2) The tax base attributable to this state of a taxpayer
26 whose business activities consists of the transportation of gas by
27 pipeline is the tax base of the taxpayer in the ratio that the

1 1,000 cubic feet miles transported in this state bear to the 1,000
2 cubic feet miles transported by the taxpayer everywhere.

3 Sec. 79. The tax base of a financial organization shall be
4 apportioned to this state by multiplying the tax base by a fraction
5 the numerator of which is the total gross receipts in this state
6 during the tax years and the denominator of which is the total
7 gross receipts of the taxpayer everywhere during the tax years.

8 Sec. 80. (1) Notwithstanding sections 73 through 76, a spun
9 off corporation that qualified to calculate its sales factor for 7
10 years under section 54 of former 1975 PA 228 may elect to calculate
11 its sales factor under this section for an additional 4 years
12 following those 7 years or 3 years if a taxpayer had an election
13 approved under section 54(1)(e) of former 1975 PA 228. Prior to the
14 end of the first year following the 7 years for which the taxpayer
15 qualified under section 54 of former 1975 PA 228 and if the spun
16 off corporation is not required to file amended returns under
17 section 54(5) of former 1975 PA 228, the spun off corporation may
18 request, in writing, approval from the state treasurer for the
19 election of the 4 additional years under this section. If the
20 taxpayer had an election approved under section 54(1)(e) of former
21 1978 PA 228, the taxpayer is not required to seek approval under
22 this section. The department shall approve the election under this
23 subsection if the requirements of this section are met. The request
24 shall include all of the following:

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

27 (b) A list of all corporations, limited liability companies,

1 and any other business entities that the spun off corporation
2 controlled at the time of the restructuring transaction.

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

21 (i) On temporary layoff.

22 (ii) On strike.

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

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

27 (v) Transferred by the spun off corporation to another

1 employer because of the sale of the spun off corporation's location
2 in this state that was the work site of the employees.

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

21 (3) A spun off corporation qualified under subsection (1) or
22 (2) that makes an election and is approved under subsection (1) or
23 (2) calculates its sales factor under section 72 subject to both of
24 the following:

25 (a) A purchaser in this state under section 72 does not
26 include a person that purchases from a seller that was included in
27 the purchaser's combined or consolidated annual return under this

1 act but, as a result of the restructuring transaction, ceased to be
2 included in the purchaser's combined or consolidated annual return
3 under this act. This subdivision applies only to sales that
4 originate from a plant located in this state.

5 (b) Total sales under section 73 do not include sales to a
6 purchaser that was a member of a Michigan affiliated group that had
7 included the seller in the filing of a combined or consolidated
8 annual return under this act but, as a result of the restructuring
9 transaction, ceased to include the seller. This subdivision applies
10 only to sales that originate from a plant located in this state to
11 a location in this state.

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

26 (5) The amount of the spun off corporation's investment
27 commitments required under this section shall not be reduced by the

1 amount of any qualifying investments in Michigan plants that are
2 sold.

3 (6) As used in this section:

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

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

16 Sec. 81. (1) If the apportionment provisions of this act do
17 not fairly represent the extent of the taxpayer's business activity
18 in this state, the taxpayer may petition for or the treasurer may
19 require the following, with respect to all or a portion of the
20 taxpayer's business activity, if reasonable:

21 (a) Separate accounting.

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

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

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

1 the department.

2 (3) The apportionment provisions of this act shall be
3 rebuttably presumed to fairly represent the business activity
4 attributed to the taxpayer in this state, taken as a whole and
5 without a separate examination of the specific elements of the tax
6 base unless it can be demonstrated that the business activity
7 attributed to the taxpayer in this state is out of all appropriate
8 proportion to the actual business activity transacted in this state
9 and leads to a grossly distorted result.

10 (4) The filing of a return or an amended return is not
11 considered a petition for the purposes of subsection (1).

12 CHAPTER 7

13 Sec. 90. (1) A taxpayer that reasonably expects business
14 license or business income tax liability for the tax year to exceed
15 \$1,000.00 shall file an estimated return and pay an estimated tax
16 for each quarter of the taxpayer's tax year. A unitary business
17 group or a consolidated taxpayer group may file a single estimated
18 return and pay estimated tax on behalf of the group.

19 (2) For taxpayers on a calendar year basis, the quarterly
20 returns and estimated payments shall be made by April 15, July 15,
21 October 15, and January 15. Taxpayers not on a calendar year basis
22 shall file quarterly returns and make estimated payments on the
23 appropriate due date which in the taxpayer's fiscal year
24 corresponds to the calendar year.

25 (3) Except as otherwise provided in this section, the
26 estimated payment made with each quarterly return of each tax year
27 shall be for the estimated tax base for the quarter or 25% of the

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

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

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

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

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

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

1 (7) With respect to a taxpayer filing an estimated tax return
2 for the taxpayer's first tax year of less than 12 months, the
3 amounts paid with each return shall be proportional to the number
4 of payments made in the first tax year.

5 (8) Payments made under this section shall be a credit against
6 the payment required with the annual tax return required in section
7 92.

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

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

21 Sec. 91. (1) A taxpayer subject to this act may elect to
22 compute the tax imposed by this act for the first tax year if that
23 tax year is less than 12 months in accordance with 1 of the
24 following methods:

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

1 which is the number of months in the taxpayer's first tax year and
2 the denominator of which is 12.

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

7 Sec. 92. (1) A single annual or final return shall be filed
8 for both business license tax and business income tax with the
9 department in the form and content prescribed by the department by
10 the last day of the fourth month after the end of the taxpayer's
11 tax year. Any final tax liability shall be remitted with this
12 return.

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

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

1 the tax unpaid for the period of the extension. The department
2 shall require with the application payment of the estimated tax
3 liability unpaid for the tax period covered by the extension.

4 Sec. 93. (1) A taxpayer required to file a return under this
5 act may be required to furnish a true and correct copy of any
6 return or portion of any return filed under the provisions of the
7 internal revenue code.

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

13 Sec. 94. (1) At the request of the department, a person
14 required by the internal revenue code to file or submit an
15 information return of income paid to others shall, to the extent
16 the information is applicable to residents of this state, at the
17 same time file or submit the information in the form and content
18 prescribed to the department.

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

24 Sec. 95. (1) Persons that are members of the same unitary
25 business group shall be treated as 1 taxpayer for purposes of any
26 original return, amended return that includes the same taxpayers of
27 the unitary business group which joined in filing the original

1 return, extension, claim for refund, assessment, collection and
2 payment, and determination of the group's tax liability under this
3 act.

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

6 (3) The department may assess the entire amount of the tax and
7 all additional taxes, penalty, and interest computed on the basis
8 of the combined tax return against any 1 or more members of the
9 unitary group.

10 Sec. 96. (1) A group of 2 or more persons may elect to be a
11 consolidated taxpayer group for the purposes of this chapter if the
12 group satisfies all of the following requirements:

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

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

12 (b) The group makes the election to be treated as a
13 consolidated taxpayer group in the manner prescribed under
14 subsection (4).

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

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

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

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

1 (iii) If at any time during any of those 5 years following the
2 election, a former member of the group no longer meets the
3 requirements under subdivision (a), that member shall report and
4 pay the tax imposed under this act separately, as a member of a
5 unitary business group, or if the former member satisfies those
6 requirements, with respect to another consolidated taxpayer group,
7 as a member of that consolidated taxpayer group.

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

9 (2) A consolidated taxpayer group shall exclude taxable
10 receipts between its members. Nothing in this section shall have
11 the effect of excluding receipts received from persons that are not
12 members of the group.

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

26 (4) Each member of a consolidated taxpayer group is jointly
27 and severally liable for the tax imposed by this act and any

1 penalties or interest thereon. The department may require 1 person
2 in the group to be the taxpayer for purposes of registration and
3 remittance of the tax, but all members of the group are subject to
4 assessment under this act.

5 CHAPTER 8

6 Sec. 100. (1) The tax imposed by this act shall be
7 administered by the department pursuant to 1941 PA 122, MCL 205.1
8 to 205.31, and this act. If a conflict exists between 1941 PA 122,
9 MCL 205.1 to 205.31, and this act, the provisions of this act
10 apply.

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

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

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

24 (5) The department shall prepare and publish statistics from
25 the records kept to administer the tax imposed by this act that
26 detail the distribution of tax receipts by type of business, legal
27 form of organization, sources of tax base, timing of tax receipts,

1 and types of deductions. The statistics shall not result in the
2 disclosure of information regarding any specific taxpayer.

3 Sec. 101. The proceeds of the tax collected under this act
4 shall be deposited in the general fund.

5 Sec. 102. There is appropriated to the department for the
6 2006-2007 state fiscal year the sum of \$2,000,000.00 to implement
7 the requirements of this act. Any portion of this amount under this
8 section that is not expended in the 2006-2007 state fiscal year
9 shall not lapse to the general fund but shall be carried forward in
10 a work project account that is in compliance with section 451a of
11 the management and budget act, 1984 PA 431, MCL 18.1451a, for the
12 following state fiscal year.

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