

HOUSE BILL No. 5460

November 26, 2007, Introduced by Reps. Bieda, Angerer and Melton and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 305 (MCL 208.1305).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) Sales of tangible personal property are in this state if
4 the property is shipped or delivered, or, in the case of
5 electricity and gas, the contract requires the property to be
6 shipped or delivered, to any purchaser within this state based on
7 the ultimate destination at the point that the property comes to
8 rest regardless of the free on board point or other conditions of
9 the sales.

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

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

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

1 this state if the property has its principal base of operations in
2 this state.

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

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

20 (a) Except as otherwise provided in this section, all receipts
21 from the performance of services are included in the numerator of
22 the apportionment factor if the recipient of the services receives
23 all of the benefit of the services in this state. If the recipient
24 of the services receives some of the benefit of the services in
25 this state, the receipts are included in the numerator of the
26 apportionment factor in proportion to the extent that the recipient
27 receives benefit of the services in this state.

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

17 (c) Sales of services that are derived directly or indirectly
18 from the sale of management, distribution, administration, or
19 securities brokerage services to, or on behalf of, a regulated
20 investment company or its beneficial owners, including receipts
21 derived directly or indirectly from trustees, sponsors, or
22 participants of employee benefit plans that have accounts in a
23 regulated investment company, shall be attributable to this state
24 to the extent that the shareholders of the regulated investment
25 company are domiciled within this state. For purposes of this
26 subdivision, "domicile" means the shareholder's mailing address on
27 the records of the regulated investment company. If the regulated

1 investment company or the person providing management services to
2 the regulated investment company has actual knowledge that the
3 shareholder's primary residence or principal place of business is
4 different than the shareholder's mailing address, then the
5 shareholder's primary residence or principal place of business is
6 the shareholder's domicile. A separate computation shall be made
7 with respect to the receipts derived from each regulated investment
8 company. The total amount of sales attributable to this state shall
9 be equal to the total receipts received by each regulated

10 investment company multiplied by a fraction determined as follows:

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

15 (ii) The denominator of the fraction is the average of the sum
16 of the beginning-of-year and end-of-year number of shares owned by
17 all shareholders.

18 (iii) For purposes of the fraction, the year shall be the tax
19 year of the regulated investment company that ends with or within
20 the tax year of the taxpayer.

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

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

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

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

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

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

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

20 (7) Receipts from credit card receivables, including interest,
21 fees, and penalties from credit card receivables and receipts from
22 fees charged to cardholders, such as annual fees, are in this state
23 if the billing address of the ~~card holder~~**CARDHOLDER** is in this
24 state.

25 (8) Receipts from the sale of credit card or other receivables
26 is in this state if the billing address of the customer is in this
27 state. Credit card issuer's reimbursements fees are in this state

1 if the billing address of the cardholder is in this state. Receipts
2 from merchant discounts, computed net of any cardholder
3 chargebacks, but not reduced by any interchange transaction fees or
4 by any issuer's reimbursement fees paid to another for charges made
5 by its cardholders, are in this state if the commercial domicile of
6 the merchant is in this state.

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

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

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

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

27 (i) Interest, dividends, and other income from investment

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

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

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

25 (a) Except as otherwise provided in subdivisions (b) through
26 (e), receipts shall be proportioned based on the ratio that revenue
27 miles of the person in this state bear to the revenue miles of the

1 person everywhere.

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

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

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

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

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

22 (e) Receipts attributable to this state of a person whose
23 business activities consist of the transportation of gas by
24 pipeline shall be proportioned based on the ratio that the gross
25 receipts for the 1,000 cubic feet miles transported in this state
26 bear to the gross receipts for the 1,000 cubic feet miles
27 transported by the person everywhere.

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

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

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

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

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

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

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

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

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

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

24 (c) 50% of the receipts from the sale of service segments for
25 a channel between 2 customer channel termination points, 1 of which
26 is located in this state and the other is located outside of this
27 state, which segments are separately charged.

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

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

15 (19) Receipts to access a carrier's network or from the sale
16 of ~~telecommunication~~ **TELECOMMUNICATIONS** services for resale are in
17 this state as follows:

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

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

24 (c) 100% of the receipts from interstate end user access line
25 charges, if the customer's service address is in this state. As
26 used in this subdivision, "interstate end user access line charges"
27 includes, but is not limited to, the surcharge approved by the

1 federal communications commission and levied pursuant to 47 CFR 69.

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

10 (20) RECEIPTS FROM THE SALE, LICENSE, BROADCAST, TRANSMISSION,
11 DISTRIBUTION, EXHIBITION, OR OTHER USE OF MEDIA PROPERTY AND
12 RECEIPTS FROM THE SALE OF SERVICES IN WHICH THE USE OF THE MEDIA
13 PROPERTY IS INTEGRAL TO THE PERFORMANCE OF THOSE SERVICES ARE IN
14 THIS STATE AND ATTRIBUTABLE TO THIS STATE IF THE COMMERCIAL
15 DOMICILE OF THE CUSTOMER IS IN THIS STATE, THE CUSTOMER HAS A
16 DIRECT CONNECTION OR RELATIONSHIP WITH THE TAXPAYER PURSUANT TO A
17 CONTRACT UNDER WHICH THE RECEIPTS ARE DERIVED, AND THE CUSTOMER
18 RECEIVES ALL OF THE BENEFIT OF THE SERVICES IN THIS STATE. IF THE
19 RECIPIENT OF THE SERVICES RECEIVES SOME OF THE BENEFIT OF THE
20 SERVICES IN THIS STATE, THE RECEIPTS ARE INCLUDED IN THE NUMERATOR
21 OF THE APPORTIONMENT FACTOR IN PROPORTION TO THE EXTENT THAT THE
22 RECIPIENT RECEIVES BENEFIT OF THE SERVICES IN THIS STATE. FOR
23 PURPOSES OF THIS SUBSECTION, IF THE RECIPIENT OF THE SERVICES IN
24 WHICH THE USE OF THE MEDIA PROPERTY IS INTEGRAL IS A TELEVISION OR
25 RADIO BROADCASTER, THE BENEFIT OF THE SERVICES IN THIS STATE SHALL
26 BE PROPORTIONED BASED ON THE RATIO THAT THE BROADCASTER'S VIEWING
27 OR LISTENING AUDIENCE IN THIS STATE BEARS TO ITS TOTAL VIEWING OR

1 LISTENING AUDIENCE. AS USED IN THIS SUBSECTION, "MEDIA PROPERTY"
2 MEANS THAT TERM AS DEFINED UNDER SECTION 113(6)(B).

3 (21) ~~(20)~~ Terms used in subsections (13) through ~~(19)~~ (20)
4 have the same meaning as those terms defined in the streamlined
5 sales and use tax agreement administered under the streamlined
6 sales and use tax administration act, 2004 PA 174, MCL 205.801 to
7 205.833.

8 (22) ~~(21)~~ For purposes of this section, a borrower is
9 considered located in this state if the borrower's billing address
10 is in this state.

11 Enacting section 1. This amendatory act takes effect January
12 1, 2008.

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

16 (a) Senate Bill No. _____ or House Bill No. 5462 (request no.
17 05552'07).

18 (b) Senate Bill No. _____ or House Bill No. 5461 (request no.
19 05554'07).