

HOUSE BILL No. 5797

February 26, 2008, Introduced by Rep. Byrnes and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 111 and 281 (MCL 208.1111 and 208.1281),
section 111 as amended by 2007 PA 207 and section 281 as added by
2007 PA 145.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 111. (1) "Gross receipts" means the entire amount
2 received by the taxpayer from any activity whether in intrastate,
3 interstate, or foreign commerce carried on for direct or indirect
4 gain, benefit, or advantage to the taxpayer or to others except for
5 the following:

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

1 (b) Amounts received by the taxpayer as an agent solely on
2 behalf of the principal that are expended by the taxpayer for any
3 of the following:

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

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

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

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

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

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

26 (c) Amounts that are excluded from gross income of a foreign
27 corporation engaged in the international operation of aircraft

1 under section 883(a) of the internal revenue code.

2 (d) Amounts received by an advertising agency **OR A NEWSPAPER**
3 **OF GENERAL CIRCULATION** used to acquire advertising media time,
4 space, production, or talent on behalf of another person.

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

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

16 (g) Proceeds from any of the following:

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

18 (ii) The original issue of debt instruments.

19 (h) Refunds from returned merchandise.

20 (i) Cash and in-kind discounts.

21 (j) Trade discounts.

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

23 (l) Security deposits.

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

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

26 (o) Proceeds from a sale, transaction, exchange, involuntary
27 conversion, or other disposition of tangible, intangible, or real

1 property that is a capital asset as defined in section 1221(a) of
2 the internal revenue code or land that qualifies as property used
3 in the trade or business as defined in section 1231(b) of the
4 internal revenue code, less any gain from the disposition to the
5 extent that gain is included in federal taxable income.

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

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

22 (r) For a sales finance company, as defined in section 2 of
23 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
24 492.102, and directly or indirectly owned in whole or in part by a
25 motor vehicle manufacturer as of January 1, 2008, and for a person
26 that is a broker or dealer as defined under section 78c(a)(4) or
27 (5) of the securities exchange act of 1934, 15 USC 78c, or a person

1 included in the unitary business group of that broker or dealer
2 that buys and sells for its own account, contracts that are subject
3 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
4 received under a repurchase agreement or other transaction properly
5 characterized as a loan.

6 (s) For a mortgage company, proceeds representing the
7 principal balance of loans transferred or sold in the tax year. For
8 purposes of this subdivision, "mortgage company" means a person
9 that is licensed under the mortgage brokers, lenders, and servicers
10 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the
11 secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and
12 has greater than 90% of its revenues, in the ordinary course of
13 business, from the origination, sale, or servicing of residential
14 mortgage loans.

15 (t) For a professional employer organization, any amount
16 charged by a professional employer organization that represents the
17 actual cost of wages and salaries, benefits, worker's compensation,
18 payroll taxes, withholding, or other assessments paid to or on
19 behalf of a covered employee by the professional employer
20 organization under a professional employer arrangement.

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

25 (v) For an individual, estate, partnership organized
26 exclusively for estate or gift planning purposes, or trust
27 organized exclusively for estate or gift planning purposes, amounts

1 received other than those from transactions, activities, and
2 sources in the regular course of the taxpayer's trade or business,
3 including the following:

4 (i) Receipts from tangible and intangible property if the
5 acquisition, rental, management, or disposition of the property
6 constitutes integral parts of the taxpayer's regular trade or
7 business operations.

8 (ii) Receipts received in the course of the taxpayer's trade or
9 business from stock and securities of any foreign or domestic
10 corporation and dividend and interest income.

11 (iii) Receipts derived from isolated sales, leases, assignment,
12 licenses, divisions, or other infrequently occurring dispositions,
13 transfers, or transactions involving property if the property is or
14 was used in the taxpayer's trade or business operation.

15 (iv) Receipts derived from the sale of a business.

16 (v) Receipts excluded from gross receipts under this
17 subsection for an individual, estate, partnership organized
18 exclusively for estate or gift planning purposes, or trust
19 organized exclusively for estate or gift planning purposes include,
20 but are not limited to, the following:

21 (A) Personal investment activity, including interest,
22 dividends, and gains from a personal investment portfolio or
23 retirement account.

24 (B) Disposition of tangible, intangible, or real property held
25 for personal use and enjoyment, such as a personal residence or
26 personal assets.

27 (2) "Insurance company" means an authorized insurer as defined

1 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
2 500.106.

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

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

8 (a) The stock of goods held for resale in the regular course
9 of trade of a retail or wholesale business, including electricity
10 or natural gas purchased for resale.

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

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

24 (d) For a person that is a broker or dealer as defined under
25 section 78c(a)(4) or (5) of the securities exchange act of 1934, 15
26 USC 78c, or a person included in the unitary business group of that
27 broker or dealer that buys and sells for its own account, contracts

1 that are subject to the commodity exchange act, 7 USC 1 to 27f, the
2 cost of securities as defined under section 475(c)(2) of the
3 internal revenue code and the cost of commodities as defined under
4 section 475(e)(2)(b), (c), and (d) of the internal revenue code,
5 excluding interest expense other than interest expense related to
6 repurchase agreements.

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

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

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

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

14 (a) The chairperson of the board.

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

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

19 Sec. 281. (1) In addition to the taxes imposed and levied
20 under this act and subject to subsections (2), (3), and (4), to
21 meet deficiencies in state funds an annual surcharge is imposed and
22 levied on each taxpayer equal to the following percentage of the
23 taxpayer's tax liability under this act after allocation or
24 apportionment to this state under this act but before calculation
25 of the various credits available under this act:

26 (a) For each taxpayer other than a person subject to the tax
27 imposed and levied under chapter 2B, 21.99%.

1 (b) For a person subject to the tax imposed and levied under
2 chapter 2B:

3 (i) For tax years ending after December 31, 2007 and before
4 January 1, 2009, 27.7%.

5 (ii) For tax years ending after December 31, 2008, 23.4%.

6 (2) If the Michigan personal income growth exceeds 0% in any 1
7 of the 3 calendar years immediately preceding the 2017 calendar
8 year, then the surcharge under subsection (1) shall not be levied
9 and imposed on or after January 1, 2017. For purposes of this
10 subsection, "Michigan personal income" means personal income for
11 this state as defined by the bureau of economic analysis of the
12 United States department of commerce or its successor.

13 (3) The amount of the surcharge imposed and levied on any
14 taxpayer under subsection (1)(a) shall not exceed \$6,000,000.00 for
15 any single tax year.

16 (4) The surcharge imposed and levied under this section does
17 not apply to ~~either~~ **ANY** of the following:

18 (a) A person subject to the tax imposed and levied under
19 chapter 2A.

20 (b) A person subject to the tax imposed and levied under
21 chapter 2B that is authorized to exercise only trust powers.

22 **(C) A PERSON THAT IS THE OWNER AND PUBLISHER OF A WEEKLY,**
23 **SEMIWEEKLY, OR DAILY NEWSPAPER THAT IS PRINTED ON NEWSPRINT WITH**
24 **RECYCLED CONTENT AND THAT HAS A CIRCULATION OF LESS THAN 4,000 AND**
25 **THE MAJOR PART OF THAT CIRCULATION IS WITHIN THE COUNTY WHERE THAT**
26 **NEWSPAPER IS PUBLISHED OR WITHIN THE COUNTIES CONTIGUOUS TO THE**
27 **COUNTY IN WHICH THE NEWSPAPER IS PUBLISHED.**

1 (5) The surcharge imposed and levied under this section shall
2 constitute a part of the tax imposed under this act and shall be
3 administered, collected, and enforced as provided under this act.

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