

# SENATE BILL No. 95

January 25, 2007, Introduced by Senator CASSIS and referred to the Committee on Finance.

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

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

CHAPTER 1

Sec. 1. This act shall be known and may be cited as the "business income 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 section 22, "business  
5 income" means that part of federal taxable income derived from  
6 business activity. For a partnership or S corporation, business  
7 income includes payments and items of income and expense that are  
8 attributable to business activity of the partnership or subchapter  
9 S corporation and separately reported to the partners or  
10 shareholders.

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

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

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

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

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

26 (2) "Employer" means an employer as defined in section 3401(d)  
27 of the internal revenue code. A person required to withhold for

1 federal income tax purposes is prima facie considered an employer.

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

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

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

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

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

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

25 (a) Proceeds from sales by a principal that the taxpayer  
26 collects in an agency capacity solely on behalf of the principal  
27 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 used to acquire  
3 advertising media time, space, production, or talent on behalf of  
4 another person.

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

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 (2) "Insurance company" means an authorized insurer as defined  
10 in section 106 of the insurance code of 1956, 1956 PA 218, MCL  
11 500.106.

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

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

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

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

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

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

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

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

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

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

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

27           (3) "State" means any state of the United States, the District

1 of Columbia, the Commonwealth of Puerto Rico, any territory or  
2 possession of the United States, and any foreign country, or a  
3 political subdivision of any of the foregoing.

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

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

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

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

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

23 (d) To the extent included in federal taxable income, deduct  
24 dividends and royalties received from foreign persons, including,  
25 but not limited to, amounts determined under section 78 or sections  
26 951 to 964 of the internal revenue code.

27 (e) To the extent included in federal taxable income, add the

1 loss or subtract the income from the business income tax base that  
2 is attributable to another entity whose business activities are  
3 taxable under this chapter or would be subject to the tax under  
4 this chapter if the business activities were in this state.

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

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

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

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

1 as is covered by its federal income tax return. A person that has a  
2 52- or 53-week tax year beginning not more than 7 days before  
3 December 31 of any year is considered to have a tax year beginning  
4 after December of that tax year.

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

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

10 CHAPTER 2

11 Sec. 20. (1) Except as otherwise provided in this act, there  
12 is levied and imposed a business income tax on the tax base of  
13 every person with business activity and nexus within this state  
14 unless prohibited by 15 USC 381 to 384. The business income tax is  
15 imposed on the tax base, after allocation or apportionment to this  
16 state, at the rate of 1.97.

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

20 (3) A person with gross receipts of more than \$350,000.00 but  
21 not more than \$15,000,000.00 that elects under section 15 of the  
22 business and economic stimulus tax act to calculate its tax  
23 liability on the gross receipts tax base is exempt from the tax  
24 imposed by this act for as long as the person remains eligible for  
25 that election.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (ii) Dissemination of market information.

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

25 (iv) Promotion.

26 (v) Research relating to members' products.

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

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

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

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

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

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

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

26 (2) Except as otherwise provided in this section, the tax base  
27 of a foreign person includes the sum of business income and the

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

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

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

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

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

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

14 (5) As used in this section:

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

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

27 (i) If an income tax treaty applies to the foreign person, that

1 term as defined in that income tax treaty in effect between the  
2 United States and another nation.

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

6 (c) "Property" means, for a foreign person, all of the  
7 taxpayer's real and tangible personal property owned or rented in  
8 the United States during the tax year.

9 (d) "United States person" means that term as defined in  
10 section 7701(a)(30) of the internal revenue code.

11 CHAPTER 4

12 Sec. 40. (1) Except as otherwise provided in this chapter, the  
13 entire tax base of a taxpayer whose business activities are  
14 confined solely to this state shall be allocated to this state.

15 (2) To the extent that the following nonbusiness income is  
16 included in the tax base under section 9(2)(f), that nonbusiness  
17 income shall be allocated as follows:

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

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

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

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

27 (iii) The extent of utilization of tangible personal property in

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

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

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

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

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

24 (g) Patent and copyright royalties are allocable to this state  
25 if the patent or copyright is utilized by the payer in this state  
26 or if the patent or copyright is utilized by the payer in a state  
27 in which the taxpayer is not taxable and the taxpayer's commercial

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

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

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

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

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

26 (b) That state has jurisdiction to subject the taxpayer to 1  
27 or more of the taxes listed in subdivision (a) regardless of

1 whether that state does or does not subject the taxpayer to that  
2 tax.

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

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

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

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

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

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

26 (c) Receipts from the lease or rental of tangible personal  
27 property are sales in this state to the extent that the property is

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

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

27 Sec. 45. (1) Except as otherwise provided under section 46,

1 sales from the performance of services are in this state if the  
2 receipts are derived from customers within this state or if the  
3 receipts are otherwise attributable to this state's marketplace.

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

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

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

1 associate the receipts with the address of the customer, then the  
2 address of the customer shall be presumed to be the address of the  
3 branch office that generates the transactions for the customer.

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

25 (i) The numerator of the fraction is the average of the sum of  
26 the beginning-of-year and end-of-year number of shares owned by the  
27 regulated investment company shareholders who have their domicile

1 in this state.

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

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

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

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

27 (3) As used in this section:

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

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

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

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

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

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

27 (2) Interest from loans not secured by real property is in

1 this state if the borrower is located in this state.

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

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

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

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

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

1 merchant is in this state.

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

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

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

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

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

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

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

1 weighted by the ratio of receipts from passenger transportation to  
2 total receipts from all transportation, and by the ratio of  
3 receipts from freight transportation to total receipts from all  
4 transportation, respectively.

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

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

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

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

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

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

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

25           (b) A list of all corporations, limited liability companies,  
26 and any other business entities that the spun off corporation  
27 controlled at the time of the restructuring transaction.

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

19 (i) On temporary layoff.

20 (ii) On strike.

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

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

25 (v) Transferred by the spun off corporation to another  
26 employer because of the sale of the spun off corporation's location  
27 in this state that was the work site of the employees.

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

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

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

1 under this act. This subdivision applies only to sales that  
2 originate from a plant located in this state.

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

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

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

1 (6) As used in this section:

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

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

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

19 (a) Separate accounting.

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

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

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

27 (3) The apportionment provisions of this act shall be

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

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

#### 10 CHAPTER 6

11 Sec. 70. (1) A taxpayer that reasonably expects tax liability  
12 for the tax year to exceed \$1,000.00 shall file an estimated return  
13 and pay an estimated tax for each quarter of the taxpayer's tax  
14 year.

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

21 (3) Except as otherwise provided in this section, the  
22 estimated payment made with each quarterly return of each tax year  
23 shall be for the estimated tax base for the quarter or 25% of the  
24 required annual payment. The required annual payment means the  
25 lesser of 100% of the tax shown on the return for that taxable  
26 year, or 100% of the tax shown on the taxpayer's return for the  
27 preceding taxable year. The second, third, and fourth estimated

1 payments in each tax year shall include adjustments, if necessary,  
2 to correct underpayments or overpayments from previous quarterly  
3 payments in the tax year.

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

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

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

15 (b) If the preceding year's tax liability under this act was  
16 \$40,000.00 or less and if the taxpayer submitted 4 equal  
17 installments the sum of which equals the immediately preceding tax  
18 year's tax liability.

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

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

1           (8) Payments made under this section shall be a credit against  
2 the payment required with the annual tax return required in section  
3 72.

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

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

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

21           (2) The tax may be computed as if this act were effective on  
22 the first day of the taxpayer's annual accounting period and the  
23 amount computed shall be multiplied by a fraction, the numerator of  
24 which is the number of months in the taxpayer's first tax year and  
25 the denominator of which is 12.

26           (3) The tax may be computed by determining the tax base in the  
27 first tax year in accordance with an accounting method satisfactory

1 to the department that reflects the actual tax base attributable to  
2 the period.

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

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

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

26 (4) An affiliated group as defined in this act, a controlled  
27 group of corporations as defined in section 1563 of the internal

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

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

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

22       Sec. 74. (1) At the request of the department, a person  
23 required by the internal revenue code to file or submit an  
24 information return of income paid to others shall, to the extent  
25 the information is applicable to residents of this state, at the  
26 same time file or submit the information in the form and content  
27 prescribed to the department.

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

6           Sec. 75. (1) The department may require or permit the filing  
7 of a consolidated or combined return by an affiliated group of  
8 United States corporations if all of the following conditions  
9 exist:

10           (a) All members of the affiliated group are Michigan  
11 taxpayers.

12           (b) Each member of the affiliated group maintains a  
13 relationship with 1 or more members of the group which includes  
14 intercorporate transactions of a substantial nature other than  
15 control, ownership, or financing arrangements, or any combination  
16 thereof.

17           (c) The business activities of each member of the affiliated  
18 group are subject to apportionment by a specific apportionment  
19 formula contained in this act which specific formula also is  
20 applicable to all other members of the affiliated group, and would  
21 be so applicable to each member even if it were not a member of the  
22 affiliated group.

23           (2) As used in this section, "United States corporation" means  
24 a domestic corporation as that term is defined in section  
25 7701(a)(3) and (4) of the internal revenue code.

26           Sec. 76. (1) Except as expressly provided in section 75, a  
27 provision of this act shall not be construed to permit or require

1 the filing of a consolidated or combined return or a consolidation  
2 or combination of the tax base or apportionment factors of 2 or  
3 more United States corporations.

4 (2) As used in this section, "United States corporation" means  
5 a domestic corporation as that term is defined in section  
6 7701(a)(3) and (4) of the internal revenue code.

7 Sec. 77. (1) The tax imposed by this act shall be administered  
8 by the department pursuant to 1941 PA 122, MCL 205.1 to 205.31, and  
9 this act. If a conflict exists between 1941 PA 122, MCL 205.1 to  
10 205.31, and this act, the provisions of this act 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. 78. The proceeds of the tax collected under this act  
4 shall be deposited in the general fund.

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

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

9 (a) Senate Bill No. 94.

10

11 (b) Senate Bill No. 96.

12