

HOUSE BILL No. 5295

September 2, 2009, Introduced by Reps. Ebli, Meadows 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 261 (MCL 208.1261).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 261. As used in this chapter:

2 (a) "Billing address" means the location indicated in the
3 books and records of the financial institution on the first day of
4 the tax year or on a later date in the tax year when the customer
5 relationship began as the address where any notice, statement, or
6 bill relating to a customer's account is mailed.

7 (b) "Borrower is located in this state" or "credit card holder
8 is located in this state" means a borrower, other than a credit
9 card holder, that is engaged in a trade or business which maintains

1 its commercial domicile in this state, or a borrower that is not
2 engaged in a trade or business or a credit card holder whose
3 billing address is in this state.

4 (c) "Commercial domicile" means the headquarters of the trade
5 or business, that is the place from which the trade or business is
6 principally managed and directed, or if a financial institution is
7 organized under the laws of a foreign country, of the commonwealth
8 of Puerto Rico, or any territory or possession of the United
9 States, such financial institution's commercial domicile shall be
10 deemed for the purposes of this chapter to be the state of the
11 United States or the District of Columbia from which such financial
12 institution's trade or business in the United States is principally
13 managed and directed. It shall be presumed, subject to rebuttal,
14 that the location from which the financial institution's trade or
15 business is principally managed and directed is the state of the
16 United States or the District of Columbia to which the greatest
17 number of employees are regularly connected or out of which they
18 are working, irrespective of where the services of such employees
19 are performed, as of the last day of the tax year.

20 (d) "Credit card" means a credit, travel, or entertainment
21 card.

22 (e) "Credit card issuer's reimbursement fee" means the fee a
23 financial institution receives from a merchant's bank because 1 of
24 the persons to whom the financial institution has issued a credit
25 card has charged merchandise or services to the credit card.

26 (f) "Financial institution" means any of the following:

27 (i) A bank holding company, a national bank, a state chartered

1 bank, an office of thrift supervision chartered bank or thrift
2 institution, ~~or~~ a savings and loan holding company other than a
3 diversified savings and loan holding company as defined in 12 USC
4 1467a(a)(F), **OR A FEDERALLY CHARTERED FARM CREDIT SYSTEM**

5 **INSTITUTION.**

6 (ii) Any person, other than a person subject to the tax imposed
7 under chapter 2A, who is directly or indirectly owned by an entity
8 described in subparagraph (i) and is a member of the unitary
9 business group.

10 (iii) A unitary business group of entities described in
11 subparagraph (i) or (ii), or both.

12 (g) "Gross business" means the sum of the following less
13 transactions between those entities included in a unitary business
14 group:

15 (i) Fees, commissions, or other compensation for financial
16 services.

17 (ii) Net gains, not less than zero, from the sale of loans and
18 other intangibles.

19 (iii) Net gains, not less than zero, from trading in stocks,
20 bonds, or other securities.

21 (iv) Interest charged to customers for carrying debit balances
22 of margin accounts.

23 (v) Interest and dividends received.

24 (vi) Any other gross proceeds resulting from the operation as a
25 financial institution.

26 (h) "Loan" means any extension of credit resulting from direct
27 negotiations between the financial institution and its customer, or

1 the purchase, in whole or in part, of such extension of credit from
2 another. Loans include participations, syndications, and leases
3 treated as loans for federal income tax purposes. Loans shall not
4 include properties treated as loans under section 595 of the
5 internal revenue code, futures or forward contracts, options,
6 notional principal contracts such as swaps, credit card
7 receivables, including purchased credit card relationships, non-
8 interest-bearing balances due from depository institutions, cash
9 items in the process of collection, federal funds sold, securities
10 purchased under agreements to resell, assets held in a trading
11 account, securities, interests in a real estate mortgage investment
12 conduit, or other mortgage-backed or asset-backed security, and
13 other similar items.

14 (i) "Loan secured by real property" means that 50% or more of
15 the aggregate value of the collateral used to secure a loan or
16 other obligation, when valued at fair market value as of the time
17 the original loan or obligation was incurred, was real property.

18 (j) "Merchant discount" means the fee or negotiated discount
19 charged to a merchant by the financial institution for the
20 privilege of participating in a program whereby a credit card is
21 accepted in payment for merchandise or services sold to the credit
22 card holder.

23 (k) "Michigan obligations" means a bond, note, or other
24 obligation issued by a governmental unit described in section 3 of
25 the shared credit rating act, 1985 PA 227, MCL 141.1053.

26 (l) "Participation" means an extension of credit in which an
27 undivided ownership interest is held on a pro rata basis in a

1 single loan or pool of loans and related collateral. In a loan
2 participation, the credit originator initially makes the loan and
3 then subsequently resells all or a portion of it to other lenders.
4 The participation may or may not be known to the borrower.

5 (m) "Principal base of operation", with respect to
6 transportation property, means the place of more or less permanent
7 nature from which said property is regularly directed or
8 controlled. With respect to an employee, the principal base of
9 operations means the place of more or less permanent nature from
10 which the employee regularly does any of the following:

11 (i) Starts his or her work and to which he or she customarily
12 returns in order to receive instructions from his or her employer.

13 (ii) Communicates with his or her customers or other persons.

14 (iii) Performs any other functions necessary to the exercise of
15 his or her trade or profession at some other point or points.

16 (n) "Real property owned" and "tangible personal property
17 owned" mean real and tangible personal property respectively on
18 which the financial institution may claim depreciation for federal
19 income tax purposes or to which the financial institution holds
20 legal title and on which no other person may claim depreciation for
21 federal income tax purposes or could claim depreciation if subject
22 to federal income tax. Real and tangible personal properties do not
23 include coin, currency, or property acquired in lieu of or pursuant
24 to a foreclosure.

25 (o) "Regular place of business" means an office at which the
26 financial institution carries on its business in a regular and
27 systematic manner and which is continuously maintained, occupied,

1 and used by employees of the financial institution. The financial
2 institution shall have the burden of proving that an investment
3 asset or activity or trading asset or activity was properly
4 assigned to a regular place of business outside of this state by
5 demonstrating that the day-to-day decisions regarding the asset or
6 activity occurred at a regular place of business outside this
7 state. Where the day-to-day decisions regarding an investment asset
8 or activity or trading asset or activity occur at more than 1
9 regular place of business and 1 such regular place of business is
10 in this state and 1 such regular place of business is outside this
11 state, such asset or activity shall be considered to be located at
12 the regular place of business of the financial institution where
13 the investment or trading policies or guidelines with respect to
14 the asset or activity are established. Unless the financial
15 institution demonstrates to the contrary, such policies and
16 guidelines shall be presumed to be established at the commercial
17 domicile of the financial institution.

18 (p) "Rolling stock" means railroad freight or passenger cars,
19 locomotives, or other rail cars.

20 (q) "Syndication" means an extension of credit in which 2 or
21 more persons finance the credit and each person is at risk only up
22 to a specified percentage of the total extension of the credit or
23 up to a specified dollar amount.

24 (r) "Transportation property" means vehicles and vessels
25 capable of moving under their own power, such as aircraft, trains,
26 water vessels, and motor vehicles, as well as any equipment or
27 containers attached to such property, such as rolling stock,

1 barges, or trailers.

2 (s) "United States obligations" means all obligations of the
3 United States exempt from taxation under 31 USC 3124(a) or exempt
4 under the United States constitution or any federal statute,
5 including the obligations of any instrumentality or agency of the
6 United States that are exempt from state or local taxation under
7 the United States constitution or any statute of the United States.

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