

MICHIGAN BUSINESS TAX ACT (EXCERPT)

Act 36 of 2007

CHAPTER 2

***** 208.1200 THIS SECTION IS REPEALED BY ACT 90 OF 2019 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2031 *****

208.1200 Taxpayer; nexus to state; "actively solicits" and "physical presence" defined.

Sec. 200. (1) Except as otherwise provided in this act or under subsection (2), a taxpayer has substantial nexus in this state and is subject to the tax imposed under this act if the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year or if the taxpayer actively solicits sales in this state and has gross receipts of \$350,000.00 or more sourced to this state.

(2) For purposes of this section, "actively solicits" shall be defined by the department through written guidance that shall be applied prospectively.

(3) As used in this section, "physical presence" means any activity conducted by the taxpayer or on behalf of the taxpayer by the taxpayer's employee, agent, or independent contractor acting in a representative capacity. Physical presence does not include the activities of professionals providing services in a professional capacity or other service providers if the activity is not significantly associated with the taxpayer's ability to establish and maintain a market in this state.

History: 2007, Act 36, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 1 of Act 39 of 2011 provides:

"Enacting section 1. The Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, is repealed effective on the date that the secretary of state receives a written notice from the department of treasury that the last certificated credit or any carryforward from that certificated credit has been claimed."

Popular name: MBT

***** 208.1201 THIS SECTION IS REPEALED BY ACT 90 OF 2019 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2031 *****

208.1201 Business income tax; imposition; adjustments; "book-tax difference," "qualifying asset," and "business loss" defined; residential rental units; definitions.

Sec. 201. (1) Except as otherwise provided in this act, there is levied and imposed a business income tax on every taxpayer with business activity within this state unless prohibited by 15 USC 381 to 384. The business income tax is imposed on the business income tax base, after allocation or apportionment to this state, at the rate of 4.95%.

(2) The business income tax base means a taxpayer's business income subject to the following adjustments, before allocation or apportionment, and the adjustments in subsections (5), (6), and (7) after allocation or apportionment:

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

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

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

(d) To the extent included in federal taxable income, deduct dividends and royalties received from persons other than United States persons and foreign operating entities, including, but not limited to, amounts determined under section 78 of the internal revenue code or sections 951 to 964 of the internal revenue code.

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

(f) Except as otherwise provided under this subdivision, to the extent deducted in arriving at federal taxable income, add any royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer's unitary business group. The addition of any royalty, interest, or other expense described under this subdivision is not required to be added if the taxpayer can demonstrate that the transaction has a nontax business purpose other than avoidance of this tax, is conducted with arm's-length pricing and rates and terms as applied in accordance

with sections 482 and 1274(d) of the internal revenue code, and satisfies 1 of the following:

(i) Is a pass through of another transaction between a third party and the related person with comparable rates and terms.

(ii) Results in double taxation. For purposes of this subparagraph, double taxation exists if the transaction is subject to tax in another jurisdiction.

(iii) Is unreasonable as determined by the treasurer, and the taxpayer agrees that the addition would be unreasonable based on the taxpayer's facts and circumstances.

(iv) The related person recipient of the transaction is organized under the laws of a foreign nation which has in force a comprehensive income tax treaty with the United States.

(g) To the extent included in federal taxable income, deduct interest income derived from United States obligations.

(h) To the extent included in federal taxable income, deduct any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner of the taxpayer and for purposes of a partner of a taxpayer, it shall be the amount properly reported on a schedule K-1-form 1065 as self-employment earnings for federal income tax purposes for the tax year.

(i) Subject to the limitation provided under this subdivision, if the book-tax differences for the first fiscal period ending after July 12, 2007 result in a deferred liability for a person subject to tax under this act, deduct the following percentages of the total book-tax difference for each qualifying asset, for each of the successive 15 tax years beginning with the 2015 tax year:

(i) For the 2015 through 2019 tax years, 4%.

(ii) For the 2020 through 2024 tax years, 6%.

(iii) For the 2025 through 2029 tax years, 10%.

(j) For tax years that begin after December 31, 2009, to the extent included in federal taxable income, deduct the amount of a charitable contribution made to the advance tuition payment fund created under section 9 of the Michigan education trust act, 1986 PA 316, MCL 390.1429.

(3) The deduction under subsection (2)(i) shall not exceed the amount necessary to offset the net deferred tax liability of the taxpayer as computed in accordance with generally accepted accounting principles which would otherwise result from the imposition of the business income tax under this section and the modified gross receipts tax under section 203 if the deduction provided under this subdivision were not allowed. The deduction under subsection (2)(i) is intended to flow through and reduce the surcharge imposed and levied under section 281. For purposes of the calculation of the deduction under subsection (2)(i), a book-tax difference shall only be used once in the calculation of the deduction arising from the taxpayer's business income tax base under this section and once in the calculation of the deduction arising from the taxpayer's modified gross receipts tax base under section 203. The adjustment under subsection (2)(i) shall be calculated without regard to the federal effect of the deduction. If the adjustment under subsection (2)(i) is greater than the taxpayer's business income tax base, any adjustment that is unused may be carried forward and applied as an adjustment to the taxpayer's business income tax base before apportionment in future years. In order to claim this deduction, the department may require the taxpayer to report the amount of this deduction on a form as prescribed by the department that is to be filed on or after the date that the first quarterly return and estimated payment are due under this act. As used in subsection (2)(i) and this subsection:

(a) "Book-tax difference" means the difference, if any, between the person's qualifying asset's net book value shown on the person's books and records for the first fiscal period ending after July 12, 2007 and the qualifying asset's tax basis on that same date.

(b) "Qualifying asset" means any asset shown on the person's books and records for the first fiscal period ending after July 12, 2007, in accordance with generally accepted accounting principles.

(4) For purposes of subsections (2) and (3), the business income of a unitary business group is the sum of the business income of each person, other than a foreign operating entity or a person subject to the tax imposed under chapter 2A or 2B, included in the unitary business group less any items of income and related deductions arising from transactions including dividends between persons included in the unitary business group.

(5) Deduct any available business loss incurred after December 31, 2007. As used in this subsection, "business loss" means a negative business income taxable amount after allocation or apportionment. For purposes of this subsection, a taxpayer that acquires the assets of another corporation in a transaction described under section 381(a)(1) or (2) of the internal revenue code may deduct any business loss attributable to that distributor or transferor corporation. The business loss shall be carried forward to the year immediately succeeding the loss year as an offset to the allocated or apportioned business income tax base, then successively to the next 9 taxable years following the loss year or until the loss is used up, whichever occurs first, but for not more than 10 taxable years after the loss year.

(6) Deduct any gain from the sale of any residential rental units in this state to a qualified affordable housing project that enters an agreement to operate the residential rental units as rent restricted units for a minimum of 15 years. If the qualified affordable housing project does not agree to operate all of the residential rental units as rent restricted units, the deduction under this subsection is limited to an amount equal to the gain from the sale multiplied by a fraction, the numerator of which is the number of those residential rental units purchased that are to be operated as a rent restricted unit and the denominator is the number of all residential rental units purchased. In order to claim this deduction, the department may require the taxpayer and the qualified affordable housing project to report the amount of this deduction on a form as prescribed by the department that is to be signed by both the taxpayer and the qualified affordable housing project and filed with the taxpayer's annual return. The department shall record a lien against the property subject to the operation agreement for the total amount of the deduction allowed under this subsection. The department shall notify the qualified affordable housing project of the maximum amount of the lien that the qualified affordable housing project may be liable for if the qualified affordable housing project fails to qualify and operate as provided in the operation agreement within 15 years after the purchase. The lien shall become payable in an amount as provided under this subsection to the state by the qualified affordable housing project if the qualified affordable housing project fails to qualify as a qualified affordable housing project and fails to operate all or some of the residential rental units as rent restricted units in accordance with the operation agreement entered upon the purchase of those units within 15 years after the deduction is claimed by a taxpayer under this subsection. An amount equal to the product of 100% of the amount of the deduction allowed under this subsection multiplied by a fraction, the numerator of which is the difference between 15 and the number of years the affordable housing project qualified and operated rent restricted units in accordance with the agreement and the denominator is 15, shall be added back to the tax liability of the qualified affordable housing project for the tax year that the qualified affordable housing project fails to comply with the agreement.

(7) Subject to the limitations provided in this subsection, for a person that is a qualified affordable housing project, deduct an amount equal to the product of that person's taxable income that is attributable to residential rental units in this state owned by the qualified affordable housing project multiplied by a fraction, the numerator of which is the number of rent restricted units in this state owned by that qualified affordable housing project and the denominator of which is the number of all residential rental units in this state owned by the qualified affordable housing project. The amount of the deduction calculated under this subsection shall be reduced by the amount of limited dividends or other distributions made to the partners, members, or shareholders of the qualified affordable housing project. Taxable income that is attributable to residential rental units does not include income received by the management, construction, or development company for completion and operation of the project and those rental units.

(8) If a qualified affordable housing project no longer meets the requirements of subsection (9)(b) or fails to operate those residential rental units as rent restricted units in accordance with the operation agreement and the requirements of subsection (9)(c), the taxpayer is entitled to the deductions under subsections (6) and (7) as long as the qualified affordable housing project continues to offer some of the residential rental units purchased as rent restricted units in accordance with the operation agreement.

(9) For purposes of subsections (6), (7), and (8) and this subsection:

(a) "Limited dividend housing association" means a limited dividend housing association, corporation, or cooperative organized and qualified pursuant to chapter 7 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1491 to 125.1496.

(b) "Qualified affordable housing project" means a person that is organized, qualified, and operated as a limited dividend housing association that has a limitation on the amount of dividends or other distributions that may be distributed to its owners in any given year and has received funding, subsidies, grants, operating support, or construction or permanent funding through 1 or more of the following sources and programs:

(i) Mortgage or other financing provided by the Michigan state housing development authority created in section 21 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1421, the United States department of housing and urban development, the United States department of agriculture for rural housing service, the Michigan interfaith housing trust fund, Michigan housing and community development fund, federal home loan bank, housing commission loan, community development financial institution, or mortgage or other funding or guaranteed by Fannie, Ginnie, federal housing association, United States department of agriculture, or federal home loan mortgage corporation.

(ii) A tax-exempt bond issued by a nonprofit organization, local governmental unit, or other authority.

(iii) A payment in lieu of tax agreement or other tax abatement.

(iv) Funding from the state or a local governmental unit through a HOME investments partnership program authorized under 42 USC 12741 to 12756.

- (v) A grant or other funding from a federal home loan bank's affordable housing program.
- (vi) Financing or funding under the new markets tax credit program under section 45D of the internal revenue code.
- (vii) Financed in whole or in part under the United States department of housing and urban development's hope VI program as authorized by section 803 of the national affordable housing act, 42 USC 8012.
- (viii) Financed in whole or in part under the United States department of housing and urban development's section 202 program authorized by section 202 of the national housing act, 12 USC 1701q.
- (ix) Financing or funding under the low-income housing tax credit program under section 42 of the internal revenue code.
- (x) Financing or other subsidies from any new programs similar to any of the above.
- (c) "Rent restricted unit" means any residential rental unit's rental income is restricted in accordance with section 42(g)(1) of the internal revenue code as if it was a qualified low-income housing project, or receives rental assistance in the form of HUD section 8 subsidies or HUD housing assistance program subsidies, or rental assistance from the United States department of agriculture rural housing programs, or from any of the other programs described under subdivision (b).

History: 2007, Act 36, Eff. Jan. 1, 2008;—Am. 2007, Act 90, Eff. Mar. 27, 2008;—Am. 2007, Act 145, Eff. Jan. 1, 2008;—Am. 2008, Act 168, Imd. Eff. June 30, 2008;—Am. 2009, Act 105, Imd. Eff. Oct. 1, 2009;—Am. 2009, Act 135, Imd. Eff. Nov. 4, 2009;—Am. 2012, Act 605, Imd. Eff. Jan. 9, 2013.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 3 of Act 145 of 2007 provides:

"Enacting section 3. Sections 281 and 451 of the Michigan business tax act, 2007 PA 36, MCL 208.1281 and 208.1451, as added by this amendatory act, and sections 105, 111, 113, 201, 239, 265, 403, 405, 409, 413, 445, 447, 515, and 601 of the Michigan business tax act, 2007 PA 36, MCL 208.1105, 208.1111, 208.1113, 208.1201, 208.1239, 208.1265, 208.1403, 208.1405, 208.1409, 208.1413, 208.1445, 208.1447, 208.1515, and 208.1601, as amended by this amendatory act, take effect January 1, 2008 and apply to all business activity occurring after December 31, 2007."

Enacting section 1 of Act 39 of 2011 provides:

"Enacting section 1. The Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, is repealed effective on the date that the secretary of state receives a written notice from the department of treasury that the last certificated credit or any carryforward from that certificated credit has been claimed."

Enacting section 1 of Act 605 of 2012 provides:

"Enacting section 1. This amendatory act is curative and intended to clarify the original intent of 2007 PA 36 and shall be retroactively applied."

Popular name: MBT

***** 208.1203 THIS SECTION IS REPEALED BY ACT 90 OF 2019 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2031 *****

208.1203 Modified gross receipts tax; levy; imposition; "modified gross receipts tax base" explained; deduction; remittance; residential rental units; definitions.

Sec. 203. (1) Except as otherwise provided in this act, there is levied and imposed a modified gross receipts tax on every taxpayer with nexus as determined under section 200. The modified gross receipts tax is imposed on the modified gross receipts tax base, after allocation or apportionment to this state at a rate of 0.80%.

(2) The tax levied and imposed under this section is upon the privilege of doing business and not upon income or property.

(3) The modified gross receipts tax base means a taxpayer's gross receipts subject to the adjustment in subsection (6), if applicable, less purchases from other firms before apportionment under this act. The modified gross receipts of a unitary business group is the sum of modified gross receipts of each person, other than a foreign operating entity or a person subject to the tax imposed under chapter 2A or 2B, included in the unitary business group less any modified gross receipts arising from transactions between persons included in the unitary business group.

(4) For the 2008 tax year, deduct 65% of any remaining business loss carryforward calculated under section 23b(h) of former 1975 PA 228 that was actually incurred in the 2006 or 2007 tax year to the extent not deducted in tax years beginning before January 1, 2008. A deduction under this subsection shall not include any business loss carryforward that was incurred before January 1, 2006. If the taxpayer is a unitary business group, the business loss carryforward under this subsection may only be deducted against the modified gross receipts tax base of that person included in the unitary business group calculated as if the person was not included in the unitary business group.

(5) Nothing in this act shall prohibit a taxpayer who qualifies for the credit under section 445 or a taxpayer who is a dealer of new or used personal watercraft from collecting the tax imposed under this section in

addition to the sales price. The amount remitted to the department for the tax under this section shall not be less than the stated and collected amount.

(6) Subject to the limitations provided in this subsection, for a person that is a qualified affordable housing project, deduct an amount equal to that person's total gross receipts attributable to residential rental units in this state owned by the qualified affordable housing project multiplied by a fraction, the numerator of which is the number of rent restricted units in this state owned by the qualified affordable housing project and the denominator of which is the number of all rental units in this state owned by the qualified affordable housing project. The amount of the deduction calculated under this subsection shall be reduced by the amount of limited dividends or other distributions made to the partners, members, or shareholders of the qualified affordable housing project. Gross receipts attributable to residential rental units do not include amounts received by the management, construction, or development company for completion and operation of the project and those rental units.

(7) If a qualified affordable housing project no longer meets the requirements of subsection (8)(b) or fails to operate those residential rental units as rent restricted units in accordance with the operation agreement and the requirements of subsection (8)(c), the qualified affordable housing project is entitled to the deduction under subsection (6) as long as the qualified affordable housing project continues to offer some of the residential rental units purchased as rent restricted units in accordance with the operation agreement.

(8) For purposes of subsections (6) and (7) and this subsection:

(a) "Limited dividend housing association" means a limited dividend housing association, corporation, or cooperative organized and qualified pursuant to chapter 7 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1491 to 125.1496.

(b) "Qualified affordable housing project" means a person that is organized, qualified, and operated as a limited dividend housing association that has a limitation on the amount of dividends or other distributions that may be distributed to its owners in any given year and has received funding, subsidies, grants, operating support, or construction or permanent funding through 1 or more of the following sources and programs:

(i) Mortgage or other financing provided by the Michigan state housing development authority created in section 21 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1421, the United States department of housing and urban development, the United States department of agriculture for rural housing service, the Michigan interfaith housing trust fund, Michigan housing and community development fund, federal home loan bank, housing commission loan, community development financial institution, or mortgage or other funding or guaranteed by Fannie, Ginnie, federal housing association, United States department of agriculture, or federal home loan mortgage corporation.

(ii) A tax-exempt bond issued by a nonprofit organization, local governmental unit, or other authority.

(iii) A payment in lieu of tax agreement or other tax abatement.

(iv) Funding from the state or a local governmental unit through a HOME investments partnership program authorized under 42 USC 12741 to 12756.

(v) A grant or other funding from a federal home loan bank's affordable housing program.

(vi) Financing or funding under the new markets tax credit program under section 45D of the internal revenue code.

(vii) Financed in whole or in part under the United States department of housing and urban development's hope VI program as authorized by section 803 of the national affordable housing act, 42 USC 8012.

(viii) Financed in whole or in part under the United States department of housing and urban development's section 202 program authorized by section 202 of the national housing act, 12 USC 1701q.

(ix) Financing or funding under the low-income housing tax credit program under section 42 of the internal revenue code.

(x) Financing or other subsidies from any new programs similar to any of the above.

(c) "Rent restricted unit" means any residential rental unit's rental income is restricted in accordance with section 42(g)(1) of the internal revenue code as if it was a qualified low-income housing project, or receives rental assistance in the form of HUD section 8 subsidies or HUD housing assistance program subsidies, or rental assistance from the United States department of agriculture rural housing programs, from any of the other programs described under subdivision (b).

History: 2007, Act 36, Eff. Jan. 1, 2008;—Am. 2008, Act 168, Imd. Eff. June 30, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 1 of Act 39 of 2011 provides:

"Enacting section 1. The Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, is repealed effective on the date that the secretary of state receives a written notice from the department of treasury that the last certificated credit or any carryforward from that certificated credit has been claimed."

Popular name: MBT

***** 208.1207 THIS SECTION IS REPEALED BY ACT 90 OF 2019 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2031 *****

208.1207 Tax exemptions; farmers' cooperative corporation; foreign person subject to tax; calculation of business income tax base; definitions.

Sec. 207. (1) Except as otherwise provided in this section, the following are exempt from the tax imposed by this act:

(a) The United States, this state, other states, and the agencies, political subdivisions, and enterprises of the United States, this state, and other states, including any grantor trust established by a municipality with the municipality as the grantor and exempt from federal income tax under the internal revenue code.

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

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

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

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

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

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

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

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

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

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

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

(ii) Dissemination of market information.

- (iii) Establishment of price and other terms of trade.
- (iv) Promotion.
- (v) Research relating to members' products.
- (g) That portion of the tax base attributable to the services provided by an attorney-in-fact to a reciprocal insurer pursuant to chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200 to 500.7234.
- (h) That portion of the tax base attributable to a multiple employer welfare arrangement that provides dental benefits only and that has a certificate of authority under chapter 70 of the insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090.
- (i) A foreign person is not subject to taxation under this act if the foreign person is domiciled in a subnational jurisdiction that does not impose an income tax on a similarly situated person domiciled in this state whose presence in the foreign country is the same as the foreign person's presence in the United States. If a foreign person is domiciled in a subnational jurisdiction that does not impose an income tax on businesses, but instead imposes some other type of subnational business tax, that foreign person is not subject to taxation under this act if that subnational business tax is not imposed on a similarly situated person domiciled in this state whose presence in the foreign country is the same as the foreign person's presence in the United States.
- (2) Subsection (1)(e) does not exempt a farmers' cooperative corporation if the total dollar value of the farmers' cooperative corporation's incidental and emergency purchases described in subsection (1)(e)(ii) are equal to or greater than 5% of the corporation's total purchases.
- (3) Except as otherwise provided in this section, a farmers' cooperative corporation that is structured to allocate net earnings in the form of patronage dividends as defined in section 1388 of the internal revenue code to its farmer or farmer cooperative corporation patrons shall exclude from its adjusted tax base the revenue and expenses attributable to business transacted with its farmer or farmer cooperative corporation patrons.
- (4) Notwithstanding any other provision of this act to the contrary, a foreign person subject to tax under this act shall calculate its business income tax base and modified gross receipts tax base under this section. Except as otherwise provided in this section, the business income tax base and modified gross receipts tax base of a foreign person is subject to all adjustments and other provisions of this act. However, neither the business income tax base nor the modified gross receipts tax base shall include proceeds from sales where title passes outside the United States.
- (5) Except as otherwise provided in this section, the modified gross receipts tax base of a foreign person includes the sum of gross receipts and the adjustments under section 203 that are related to United States business activity.
- (6) Except as otherwise provided in this section, the business income tax base of a foreign person includes the sum of business income and the adjustments under section 201 that are related to United States business activity.
- (7) The sales factor for a foreign person is a fraction, the numerator of which is the taxpayer's total sales in this state where title passes inside the United States during the tax year and the denominator of which is the taxpayer's total sales in the United States where title passes inside the United States during the tax year.
- (8) As used in this section:
 - (a) "Business income" means, for a foreign person, gross income attributable to the taxpayer's United States business activity and gross income derived from sources within the United States minus the deductions allowed under the internal revenue code that are related to that gross income. Gross income includes the proceeds from sales shipped or delivered to any purchaser within the United States and for which title transfers within the United States; proceeds from services performed within the United States; and a pro rata proportion of the proceeds from services performed both within and outside the United States to the extent the recipient receives benefit of the services within the United States.
 - (b) "Domiciled" means the location of the headquarters of the trade or business from which the trade or business of the foreign person is principally managed and directed.
 - (c) For subsection (1)(b), "exclusively" means that term as applied for purposes of section 501(c)(3) of the internal revenue code.
 - (d) "Foreign person" means either of the following:
 - (i) An individual who is not a United States resident, whether or not the individual is subject to taxation under the internal revenue code.
 - (ii) A person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the internal revenue code.
 - (e) "Gross receipts" means, for a foreign person, gross receipts as defined in section 111(1) from United States business activity or from sources within the United States. Gross receipts include all sales for which

title transfers within the United States; proceeds from all services performed within the United States; and a pro rata portion of proceeds from services performed both within and outside of the United States to the extent the recipient receives benefit of the services within the United States.

History: 2007, Act 36, Eff. Jan. 1, 2008;—Am. 2008, Act 435, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 1 of Act 435 of 2008 provides:

"Enacting section 1. This amendatory act is retroactive and effective January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Popular name: MBT