

HOUSE BILL No. 6596

November 6, 2008, Introduced by Rep. Bieda and referred to the Committee on Tax Policy.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 111. (1) "Gross receipts" means the entire amount
2 received by the taxpayer **AS DETERMINED BY USING THE TAXPAYER'S**
3 **METHOD OF ACCOUNTING USED FOR FEDERAL INCOME TAX PURPOSES** from any
4 activity whether in intrastate, interstate, or foreign commerce
5 carried on for direct or indirect gain, benefit, or advantage to
6 the taxpayer or to others except for the following:

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

10 (b) Amounts received by the taxpayer as an agent solely on

1 behalf of the principal that are expended by the taxpayer for any
2 of the following:

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

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

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

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

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

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

25 (c) Amounts that are excluded from gross income of a foreign
26 corporation engaged in the international operation of aircraft
27 under section 883(a) of the internal revenue code.

1 (d) Amounts received by an advertising agency used to acquire
2 advertising media time, space, production, or talent on behalf of
3 another person.

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

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

15 (g) Proceeds from any of the following:

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

17 (ii) The original issue of debt instruments.

18 (h) Refunds from returned merchandise.

19 (i) Cash and in-kind discounts.

20 (j) Trade discounts.

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

22 (l) Security deposits.

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

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

25 (o) Proceeds from a sale, transaction, exchange, involuntary
26 conversion, **MATURITY, REDEMPTION, REPURCHASE, RECAPITALIZATION**, or
27 other disposition **OR REORGANIZATION** of tangible, intangible, or

1 real property, ~~that~~ LESS ANY GAIN FROM THE DISPOSITION OR
2 REORGANIZATION TO THE EXTENT THAT THE GAIN IS INCLUDED IN THE
3 TAXPAYER'S FEDERAL TAXABLE INCOME, IF THE PROPERTY SATISFIES 1 OR
4 MORE OF THE FOLLOWING:

5 (i) THE PROPERTY is a capital asset as defined in section
6 1221(a) of the internal revenue code. ~~or~~

7 (ii) THE PROPERTY IS land that qualifies as property used in
8 the trade or business as defined in section 1231(b) of the internal
9 revenue code. ~~, less any gain from the disposition to the extent~~
10 ~~that gain is included in federal taxable income.~~

11 (iii) THE PROPERTY IS USED IN A HEDGING TRANSACTION ENTERED INTO
12 BY THE TAXPAYER IN THE NORMAL COURSE OF THE TAXPAYER'S TRADE OR
13 BUSINESS PRIMARILY TO MANAGE THE RISK OF EXPOSURE TO FOREIGN
14 CURRENCY FLUCTUATIONS THAT AFFECT ASSETS, LIABILITIES, PROFITS,
15 LOSSES, EQUITY, OR INVESTMENTS IN FOREIGN OPERATIONS; INTEREST RATE
16 FLUCTUATIONS; OR COMMODITY PRICE FLUCTUATIONS. FOR PURPOSES OF THIS
17 SUBPARAGRAPH, THE ACTUAL TRANSFER OF TITLE OF REAL OR TANGIBLE
18 PERSONAL PROPERTY TO ANOTHER PERSON IS NOT A HEDGING TRANSACTION.
19 ONLY THE OVERALL NET GAIN FROM THE HEDGING TRANSACTIONS ENTERED
20 INTO DURING THE TAX YEAR IS INCLUDED IN GROSS RECEIPTS. AS USED IN
21 THIS SUBPARAGRAPH, "HEDGING TRANSACTION" MEANS THAT TERM AS DEFINED
22 UNDER SECTION 1221 OF THE INTERNAL REVENUE CODE REGARDLESS OF
23 WHETHER THE TRANSACTION WAS IDENTIFIED BY THE TAXPAYER AS A HEDGE
24 FOR FEDERAL INCOME TAX PURPOSES, PROVIDED, HOWEVER, THAT
25 TRANSACTIONS EXCLUDED UNDER THIS SUBPARAGRAPH AND NOT IDENTIFIED AS
26 A HEDGE FOR FEDERAL INCOME TAX PURPOSES SHALL BE IDENTIFIABLE TO
27 THE DEPARTMENT BY THE TAXPAYER AS A HEDGE IN ITS BOOKS AND RECORDS.

1 (iv) THE PROPERTY IS INVESTMENT AND TRADING ASSETS MANAGED AS
2 PART OF THE PERSON'S TREASURY FUNCTION. FOR PURPOSES OF THIS
3 SUBPARAGRAPH, A PERSON PRINCIPALLY ENGAGED IN THE TRADE OR BUSINESS
4 OF PURCHASING AND SELLING INVESTMENT AND TRADING ASSETS IS NOT
5 PERFORMING A TREASURY FUNCTION. ONLY THE OVERALL NET GAIN FROM THE
6 TREASURY FUNCTION INCURRED DURING THE TAX YEAR IS INCLUDED IN GROSS
7 RECEIPTS. AS USED IN THIS SUBPARAGRAPH, "TREASURY FUNCTION" MEANS
8 THE POOLING AND MANAGEMENT OF INVESTMENT AND TRADING ASSETS FOR THE
9 PURPOSE OF SATISFYING THE CASH FLOW OR LIQUIDITY NEEDS OF THE
10 TAXPAYER'S TRADE OR BUSINESS.

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

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

27 (r) For a sales finance company, as defined in section 2 of

1 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
2 492.102, and directly or indirectly owned in whole or in part by a
3 motor vehicle manufacturer as of January 1, 2008, and for a person
4 that is a broker or dealer as defined under section 78c(a)(4) or
5 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
6 included in the unitary business group of that broker or dealer
7 that buys and sells for its own account, contracts that are subject
8 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
9 received under a repurchase agreement or other transaction properly
10 characterized as a loan.

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

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

26 (u) Any invoiced items used to provide more favorable floor
27 plan assistance to a person subject to the tax imposed under this

act than to a person not subject to this tax and paid by a manufacturer, distributor, or supplier.

(v) For an individual, estate, ~~partnership organized exclusively for estate or gift planning purposes, or trust~~ **OTHER PERSON** organized ~~exclusively for estate or gift planning purposes,~~ amounts received other than those from transactions, activities, and sources in the regular course of the taxpayer's trade or business. ~~, including~~ **FOR PURPOSES OF THIS SUBDIVISION, ALL OF THE FOLLOWING APPLY:**

(i) **AMOUNTS RECEIVED FROM TRANSACTIONS, ACTIVITIES, AND SOURCES IN THE REGULAR COURSE OF THE TAXPAYER'S BUSINESS INCLUDE, BUT ARE NOT LIMITED TO,** the following:

(A) ~~(i)~~ Receipts from tangible and intangible property if the acquisition, rental, **LEASE**, management, or disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

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

(C) ~~(iii)~~ Receipts derived from isolated sales, leases, ~~assignment~~ **ASSIGNMENTS**, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving **TANGIBLE, INTANGIBLE, OR REAL** property if the property is or was used in the taxpayer's trade or business operation.

(D) ~~(iv)~~ Receipts derived from the sale of **AN INTEREST IN** a business.

(E) ~~(v)~~ Receipts ~~excluded from gross receipts under this~~

1 ~~subsection for an individual, estate, partnership organized~~
2 ~~exclusively for estate or gift planning purposes, or trust~~
3 ~~organized exclusively for estate or gift planning purposes~~ **DERIVED**
4 **FROM THE LEASE OR RENTAL OF REAL PROPERTY.**

5 **(ii) RECEIPTS EXCLUDED FROM GROSS RECEIPTS** include, but are not
6 limited to, the following:

7 **(A) ~~Personal~~ RECEIPTS DERIVED FROM** investment activity,
8 including interest, dividends, **ROYALTIES**, and gains from a ~~personal~~
9 **AN** investment portfolio or retirement account, **IF THE INVESTMENT**
10 **ACTIVITY IS NOT PART OF THE TAXPAYER'S TRADE OR BUSINESS.**

11 **(B) ~~Disposition~~ RECEIPTS DERIVED FROM THE DISPOSITION** of
12 tangible, intangible, or real property held for personal use and
13 enjoyment, such as a personal residence or personal assets.

14 **(W) RECEIPTS DERIVED FROM INVESTMENT ACTIVITY BY A PERSON THAT**
15 **IS ORGANIZED EXCLUSIVELY TO CONDUCT INVESTMENT ACTIVITY AND THAT**
16 **DOES NOT CONDUCT INVESTMENT ACTIVITY FOR ANY PERSON OTHER THAN AN**
17 **INDIVIDUAL OR A PERSON RELATED TO THAT INDIVIDUAL OR BY A COMMON**
18 **TRUST FUND ESTABLISHED UNDER THE COLLECTIVE INVESTMENT FUNDS ACT,**
19 **1941 PA 174, MCL 555.101 TO 555.113. FOR PURPOSES OF THIS**
20 **SUBDIVISION, A PERSON IS RELATED TO AN INDIVIDUAL IF THAT PERSON IS**
21 **A SPOUSE, BROTHER OR SISTER, WHETHER OF THE WHOLE OR HALF BLOOD OR**
22 **BY ADOPTION, ANCESTOR, LINEAL DESCENDENT OF THAT INDIVIDUAL OR**
23 **RELATED PERSON, OR A TRUST BENEFITING THAT INDIVIDUAL OR 1 OR MORE**
24 **PERSONS RELATED TO THAT INDIVIDUAL.**

25 **(X) INTEREST INCOME AND DIVIDENDS DERIVED FROM OBLIGATIONS OR**
26 **SECURITIES OF THE UNITED STATES GOVERNMENT, THIS STATE, OR ANY**
27 **GOVERNMENTAL UNIT OF THIS STATE. AS USED IN THIS SUBDIVISION,**

1 **"GOVERNMENTAL UNIT" MEANS THAT TERM AS DEFINED IN SECTION 3 OF THE**
2 **SHARED CREDIT RATING ACT, 1985 PA 227, MCL 141.1053.**

3 (2) "Insurance company" means an authorized insurer as defined
4 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
5 500.106.

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

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

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

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

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

27 (d) For a person that is a **SECURITIES TRADER**, broker, or

1 dealer as defined under section 78c(a)(4) or (5) of the securities
 2 exchange act of 1934, 15 USC 78c, or a person included in the
 3 unitary business group of that **SECURITIES TRADER**, broker, or dealer
 4 that buys and sells for its own account, contracts that are subject
 5 to the commodity exchange act, 7 USC 1 to 27f, the cost of
 6 securities as defined under section 475(c)(2) of the internal
 7 revenue code and **FOR A SECURITIES TRADER** the cost of commodities **AS**
 8 **DEFINED UNDER SECTION 475(E)(2) AND FOR A BROKER OR DEALER THE COST**
 9 **OF COMMODITIES** as defined under section 475(e)(2)(b), (c), and (d)
 10 of the internal revenue code, excluding interest expense other than
 11 interest expense related to repurchase agreements. **AS USED IN THIS**
 12 **SUBDIVISION:**

13 (i) "BROKER" MEANS THAT TERM AS DEFINED UNDER SECTION 78C(A)(4)
 14 OF THE SECURITIES EXCHANGE ACT OF 1934, 15 USC 78C.

15 (ii) "DEALER" MEANS THAT TERM AS DEFINED UNDER SECTION
 16 78C(A)(5) OF THE SECURITIES EXCHANGE ACT OF 1934, 15 USC 78C.

17 (iii) "SECURITIES TRADER" MEANS A PERSON THAT ENGAGES IN THE
 18 TRADE OR BUSINESS OF PURCHASING AND SELLING INVESTMENTS AND TRADING
 19 ASSETS.

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

21 (i) Personal property under lease or principally intended for
 22 lease rather than sale.

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

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

27 (a) The chairperson of the board.

1 (b) The president, vice president, secretary, or treasurer of
2 the corporation or board.

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

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