

# MICHIGAN CORPORATE INCOME TAX ACT

## Act XX of 2011

AN ACT to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of 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; to provide for the interrelation of this act with other acts; and to make appropriations.

*The People of the State of Michigan enact:*

### CHAPTER 1

#### 208.101 Short title; legislative intent.

(1) This act shall be known and may be cited as the "Michigan corporate income tax act".

(2) It is the intent of the legislature that the tax levied under this act will serve to improve the economic condition of this state, foster continued and diverse economic growth in this state, and enable this state to compete fairly and effectively in the world marketplace for economic development opportunities that will provide for and protect the health, safety, and welfare of the citizens of this state, now and in the future.

#### 208.103 Terms; meanings and references.

A term used in this act and not defined differently shall have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes in effect for the tax year unless a different meaning is clearly required. A reference in this act to the internal revenue code includes other provisions of the laws of the United States relating to federal income taxes.

#### 208.105 Definitions; "B".

(1) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered by an employee to his or her employer or services as a director of a corporation. Although an activity of a taxpayer may be incidental to another or to other of his or her business activities, each activity shall be considered to be business engaged in within the meaning of this act.

(2) "Business income" means federal taxable income. Business income includes all income, gain, deduction and loss of a federally disregarded entity owned by the taxpayer, to the extent those items are included in calculating the federal taxable income of the taxpayer. For a taxpayer that is a mutual or cooperative electric company exempt under section 501(c)(12) of the internal

revenue code, business income equals the organization's excess or deficiency of revenues over expenses as reported to the federal government by those organizations exempt from the federal income tax under the internal revenue code, less capital credits paid to members of that organization, less income attributed to equity in another organization's net income, and less income resulting from a charge approved by a state or federal regulatory agency that is restricted for a specified purpose and refundable if it is not used for the specified purpose. For a tax-exempt taxpayer, business income means only that part of federal taxable income derived from unrelated business activity. Business income includes the following:

- (a) All income from tangible and intangible property if the acquisition, rental, management, or disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.
- (b) Gains or losses incurred in the taxpayer's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income included in federal taxable income whether or not actually received.
- (c) Income derived from isolated sales, leases, assignment, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving property if the property is or was used in the taxpayer's trade or business operation.
- (d) Gains or losses from the sale of a business.

#### 208.107 Definitions; " C " and " D " .

- (1) "Corporation" means a taxpayer that is required or has elected to file as a C corporation as defined under chapter 1 of subtitle A of the internal revenue code, section 1361(a)(2) and chapter 79 of the internal revenue code, section 7701(a)(3).
- (2) "Department" means the department of treasury.

#### 208.109 Definitions; " E " and " F " .

- (1) "Federal taxable income" means taxable income as defined in section 63 of the internal revenue code, except that federal taxable income shall be calculated as if section 168(k) and section 199 of the internal revenue code were not in effect.
- (2) "Foreign operating entity" means a United States person that satisfies each of the following:
  - (a) Would otherwise be a part of a unitary business group that has at least 1 person included in the unitary business group that is taxable in this state.
  - (b) Has substantial operations outside the United States, the District of Columbia, any territory or possession of the United States except for the commonwealth of Puerto Rico, or a political subdivision of any of the foregoing.
  - (c) At least 80% of its income is active foreign business income as defined in section 861(c)(1)(B) of the internal revenue code.

#### 208.111 Definitions; " G " to " I " .

(1) "Insurance company" means an authorized insurer as defined in section 108 of the insurance code of 1956, 1956 PA 218, MCL 500.108.

(2) "Internal revenue code" means the United States internal revenue code of 1986 in effect on January 1, 2012 or, at the option of the taxpayer, in effect for the tax year.

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

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

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

(c) For a person that is a securities trader, broker, or dealer or a person included in the unitary business group of that securities trader, broker, or dealer that buys and sells for its own account, contracts that are subject to the commodity exchange act, 7 USC 1 to 27f, the cost of securities as defined under section 475(c)(2) of the internal revenue code and for a securities trader the cost of commodities as defined under section 475(e)(2) and for a broker or dealer the cost of commodities as defined under section 475(e)(2)(b), (c), and (d) of the internal revenue code, excluding interest expense other than interest expense related to repurchase agreements. As used in this subdivision:

(i) "Broker" means that term as defined under section 78c(a)(4) of the securities exchange act of 1934, 15 USC 78c.

(ii) "Dealer" means that term as defined under section 78c(a)(5) of the securities exchange act of 1934, 15 USC 78c.

(iii) "Securities trader" means a person that engages in the trade or business of purchasing and selling investments and trading assets.

(d) Inventory does not include either of the following:

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

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

#### 208.115 Definitions; "R" to "S".

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

(2) "Sale" or "sales" means, except as provided in subdivision (e), the amounts received by the taxpayer as consideration from the following:

(a) The transfer of title to, or possession of, property that is stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. For intangible property, the amounts received shall be limited to any gain received from the disposition of that property.

(b) The performance of services that constitute business activities.

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

(d) Any combination of business activities described in subdivisions (a), (b), and (c).

(e) For taxpayers not engaged in any other business activities, sales include interest, dividends, and other income from investment assets and activities and from trading assets and activities.

(3) "Shareholder" means a person who owns outstanding stock in a business or is a member of a business entity that files as a corporation for federal income tax purposes. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the internal revenue code.

(4) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country, or a political subdivision of any of the foregoing.

#### 208.117 Definitions; " T " and " U " .

(1) "Tangible personal property" means that term as defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

(2) "Tax" means the tax imposed under this act, including interest and penalties under this act, unless the term is given a more limited meaning in the context of this act or a provision of this act.

(3) "Tax-exempt person" means an organization that is exempt from federal income tax under section 501(a) of the internal revenue code, and a partnership, limited liability company, joint venture, unincorporated association, or other group or combination of organizations acting as a unit if all such organizations are exempt from federal income tax under section 501(a) of the internal revenue code and if all activities of the unit are exclusively related to the charitable, educational, or other purposes or functions that are the basis for the exemption of such organizations from federal income tax, except the following:

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

(b) 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 but for its failure to meet the requirement in section 501(c)(12) that 85% or more of its income must consist of amounts collected from members.

(4) "Tax year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base of a taxpayer is computed under this act. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act, a taxpayer's tax year is for the same period as is covered by its federal income tax return. A taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before the end of any month is considered to have a tax year beginning on the first day of the subsequent month of that tax year. If the term tax year in this act is used in reference to 1 or more previous or preceding tax years and those referenced tax years are before January 1, 2012, then those referenced tax years are deemed those same tax years during which former 2007 PA 36 was in effect. A member of a unitary business group that joins or leaves the group other than at the end of its federal tax year will have a tax year beginning with its federal income tax period

and ending on the date of joining or departing the group, and another tax year beginning immediately after joining or departing the group and ending with its federal income tax period.

(5) "Taxpayer" means a corporation as defined in this act or a unitary business group liable for a tax, interest, or penalty under this act.

(6) "Unitary business group" means a group of United States persons that are corporations, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other members, and that has business activities or operations which result in a flow of value between or among members included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations.

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

(8) "Unrelated business activity" means, for a tax-exempt person, business activity directly connected with an unrelated trade or business as defined in section 513 of the internal revenue code.

## CHAPTER 2

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

(1) Except as otherwise provided in this act or under subsection (2), a taxpayer is a corporation that 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 sales of \$350,000.00 or more sourced to this state.

(2) For purposes of this section, "actively solicits" means purposeful solicitation of persons within this state. Solicitation means speech or conduct that explicitly or implicitly invites an order; and activities that neither explicitly nor implicitly invites an order, but is entirely ancillary to requests for an order. Solicitation is purposeful when it is directed at or intended to reach persons within Michigan or the Michigan market.

(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.

208.201 Corporate income tax; imposition; adjustments; and "business loss" defined.

(1) Except as otherwise provided in this act, there is levied and imposed a corporate income tax on every corporation with business activity within this state unless prohibited by 15 USC 381 to

384. The corporate income tax is imposed on the corporate income tax base, after allocation or apportionment to this state, at the rate of 6%.

(2) The corporate income tax base means a taxpayer's business income subject to the following adjustments, before allocation or apportionment, and the adjustment in subsection (4) 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) 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, 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.

(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.

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

(3) For purposes of subsection (2), 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 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.

(4) Deduct any available business loss incurred after December 31, 2011. As used in this subsection, "business loss" means a negative business income taxable amount after allocation or apportionment. The business loss shall be carried forward to the year immediately succeeding the

loss year as an offset to the allocated or apportioned corporate 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.

#### 208.203 Tax exemptions; foreign person subject to tax; calculation of business income tax base; definitions.

(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.

(b) A person who is 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 business taxable income of an exempt person.

(c) A foreign person that is domiciled in a member country of the North American Free Trade Agreement 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 qualifying 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) Notwithstanding any other provision of this act to the contrary, a foreign person subject to tax under this act shall calculate its corporate income tax base under this section. Except as otherwise provided in this section, the corporate income tax base of a foreign person is subject to all adjustments and other provisions of this act. However, the corporate income tax base shall not include proceeds from sales where title passes outside the United States.

(3) Except as otherwise provided in this section, the corporate 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.

(4) 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.

(5) 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) "Foreign person" means 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.

## CHAPTER 2A

208.235 Insurance companies; tax payment; determination; direct premiums; exceptions; tax in lieu of privilege or franchise fees or taxes; nonapplicability of tax to MCL 500.4601 to 500.4673 and MCL 500.4701 to 500.4747.

(1) Except as otherwise provided under subsection (4), each insurance company shall pay a tax determined under this chapter.

(2) The tax imposed by this chapter on each insurance company shall be a tax equal to 1.25% of gross direct premiums written on property or risk located or residing in this state. Direct premiums do not include any of the following:

(a) Premiums on policies not taken.

(b) Returned premiums on canceled policies.

(c) Receipts from the sale of annuities.

(d) Receipts on reinsurance premiums if the tax has been paid on the original premiums.

(e) The first \$190,000,000.00 of disability insurance premiums written in this state, other than credit insurance and disability income insurance premiums, of each insurance company subject to tax under this chapter. This exemption shall be reduced by \$2.00 for each \$1.00 by which the insurance company's gross direct premiums from insurance carrier services in this state and outside this state exceed \$280,000,000.00.

(3) The tax calculated under this chapter is in lieu of all other privilege or franchise fees or taxes imposed by this act or any other law of this state, except taxes on real and personal property, taxes collected under the general sales tax act, 1933 PA 167, MCL 205.1 to 205.78, and taxes collected under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, and except as otherwise provided in the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(4) The tax imposed and levied under this act does not apply to an insurance company authorized under chapter 46 or 47 of the insurance code of 1956, 1956 PA 218, MCL 500.4601 to 500.4673, and MCL 500.4701 to 500.4747.

208.237 Insurance company; tax; imposition; tax year as calendar year; filing annual return; calculation of estimated payment; disclosure of tax return.

(1) An insurance company is subject to the tax imposed by this chapter or by section 476a of the insurance code of 1956, 1956 PA 218, MCL 500.476a, if applicable, whichever is greater.

(2) The tax year of an insurance company is the calendar year.

(3) Notwithstanding section 405, an insurance company shall file the annual return required under this act before March 2 after the end of the tax year, and an automatic extension under section 405(3) is not available.

(4) For the purpose of calculating an estimated payment required by section 401, the greater of the amount of tax imposed on an insurance company under this chapter or under section 476a of the insurance code of 1956, 1956 PA 218, MCL 500.476a, shall be considered the insurance company's tax liability for the immediately preceding tax year.

(5) The requirements of section 28(1)(f) of 1941 PA 122, MCL 205.28, that prohibit an employee or authorized representative of, a former employee or authorized representative of, or anyone connected with the department from divulging any facts or information obtained in connection with the administration of a tax, do not apply to disclosure of a tax return required by this section.

## CHAPTER 2B

### 208.261 Definitions.

As used in this chapter:

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

(2) "Borrower is located in this state" or "credit card holder is located in this state" means a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state, or a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(3) "Commercial domicile" means the headquarters of the trade or business, that is the place from which the trade or business is principally managed and directed, or if a financial institution is organized under the laws of a foreign country, of the commonwealth of Puerto Rico, or any territory or possession of the United States, such financial institution's commercial domicile shall be deemed for the purposes of this chapter to be the state of the United States or the District of Columbia from which such financial institution's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the financial institution's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are

regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the tax year.

(4) "Credit card" means a credit, travel, or entertainment card.

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

(6) "Financial institution" means any of the following:

(a) A bank holding company, a national bank, a state chartered bank, an office of thrift supervision chartered bank or thrift institution, a savings and loan holding company other than a diversified savings and loan holding company as defined in 12 USC 1467a(a)(F), or a federally chartered farm credit system institution.

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

(c) A unitary business group of entities described in subparagraph (a) or (b), or both.

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

(a) Fees, commissions, or other compensation for financial services.

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

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

(d) Interest charged to customers for carrying debit balances of margin accounts.

(e) Interest and dividends received.

(f) Any other gross proceeds resulting from the operation as a financial institution.

(7) "Loan" means any extension of credit resulting from direct negotiations between the financial institution and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include properties treated as loans under section 595 of the internal revenue code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest-bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit, or other mortgage-backed or asset-backed security, and other similar items.

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

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

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

(10) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

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

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

(b) Communicates with his or her customers or other persons.

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

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

(13) "Regular place of business" means an office at which the financial institution carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the financial institution. The financial institution shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than 1 regular place of business and 1 such regular place of business is in this state and 1 such regular place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the financial institution where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the financial institution demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the financial institution.

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

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

(16) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, or trailers.

(17) "United States obligations" means all obligations of the United States exempt from taxation under 31 USC 3124(a) or exempt under the United States constitution or any federal statute, including the obligations of any instrumentality or agency of the United States that are exempt

from state or local taxation under the United States constitution or any statute of the United States.

#### 208.263 Financial institution subject to franchise tax; nexus.

(1) Every financial institution with nexus in this state as determined under section 200 is subject to a franchise tax. The franchise tax is imposed upon the tax base of the financial institution as determined under section 265 after allocation or apportionment to this state, at the rate of 0.XXX%.

(2) The tax under this chapter is in lieu of the tax levied and imposed under chapter 2 of this act.

#### 208.265 Financial institution; tax base; net capital; computation; determination; unitary business group of financial institutions; change in organization; combination of financial institutions.

(1) For a financial institution, tax base means the financial institution's net capital. Net capital means equity capital as computed in accordance with generally accepted accounting principles less the average daily book value of United States obligations and Michigan obligations. If the financial institution does not maintain its books and records in accordance with generally accepted accounting principles, net capital shall be computed in accordance with the books and records used by the financial institution, so long as the method fairly reflects the financial institution's net capital for purposes of the tax levied by this chapter. Net capital does not include up to 125% of the minimum regulatory capitalization requirements of a person subject to the tax imposed under chapter 2A.

(2) Net capital shall be determined by adding the financial institution's net capital as of the close of the current tax year and preceding 4 tax years and dividing the resulting sum by 5. If a financial institution has not been in existence for a period of 5 tax years, net capital shall be determined by adding together the financial institution's net capital for the number of tax years the financial institution has been in existence and dividing the resulting sum by the number of years the financial institution has been in existence. For purposes of this section, a partial year shall be treated as a full year.

(3) For a unitary business group of financial institutions, net capital calculated under this section does not include the investment of 1 member of the unitary business group in another member of that unitary business group.

(4) For purposes of this section, each of the following applies:

(a) A change in identity, form, or place of organization of 1 financial institution shall be treated as if a single financial institution had been in existence for the entire tax year in which the change occurred and each tax year after the change.

(b) The combination of 2 or more financial institutions into 1 shall be treated as if the constituent financial institutions had been a single financial institution in existence for the entire tax year in which the combination occurred and each tax year after the combination, and the book values and deductions for United States obligations and Michigan obligations of the constituent institutions shall be combined. A combination shall include any acquisition required to be

accounted for by the surviving financial institution in accordance with generally accepted accounting principles or a statutory merger or consolidation.

**208.267 Financial institution; tax base; allocation within state; apportionment within and outside state; circumstances; gross business factor; election to continue apportionment of tax within and outside state.**

(1) Except as otherwise provided under this chapter, the tax base of a financial institution whose business activities are confined solely to this state shall be allocated to this state. Except as otherwise provided under subsection (5), the tax base of a financial institution whose business activities are subject to tax both within and outside this state shall be apportioned to this state by multiplying the tax base by the gross business factor.

(2) A financial institution whose business activities are subject to tax both within and outside of this state is subject to tax in another state in either of the following circumstances:

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

(b) That state has jurisdiction to subject the financial institution to 1 or more of the taxes listed in subdivision (a) regardless of whether that state does or does not subject the financial institution to that tax.

(3) Except as otherwise provided in subsection (4), the gross business factor is a fraction, the numerator of which is the total gross business of the financial institution in this state during the tax year and the denominator of which is the total gross business of the financial institution everywhere during the tax year.

(4) Except as otherwise provided under this subsection, for a financial institution that is included in a unitary business group, gross business includes gross business in this state of every financial institution included in the unitary business group without regard to whether the financial institution has nexus in this state. Gross business between financial institutions included in a unitary business group must be eliminated in calculating the gross business factor.

**208.269 Financial institution; gross business.**

Gross business in this state of the financial institution is determined as follows:

(1) Receipts from credit card receivables including without limitation interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to credit card holders such as annual fees are in this state if the billing address of the credit card holder is located in this state.

(2) Credit card issuer's reimbursement fees are in this state if the billing address of the credit card holder is located in this state.

(3) Receipts from merchant discounts are in this state if the commercial domicile of the merchant is in this state.

(4) Loan servicing fees are in this state under any of the following circumstances:

- (a) For a loan secured by real property, if the real property for which the loan is secured is in this state.
- (b) For a loan secured by real property, if the real property for which the loan is secured is located both within and without this state and 1 or more other states and more than 50% of the fair market value of the real property is located in this state.
- (c) For a loan secured by real property, if more than 50% of the fair market value of the real property for which the loan is secured is not located within any 1 state but the borrower is located in this state.
- (d) For a loan not secured by real property, the borrower is located in this state.
- (5) Receipts from services are in this state if the recipient of the services receives all of the benefit of the services in this state. If the recipient of the services receives some of the benefit of the services in this state, the receipts are included in the numerator of the apportionment factor in proportion to the extent that the recipient receives benefit of the services in this state.
- (6) Receipts from investment assets and activities and trading assets and activities, including interest and dividends, are in this state if the financial institution's customer is in this state. If the location of the financial institution's customer cannot be determined, both of the following:
- (a) Interest, dividends, and other income from investment assets and activities and from trading assets and activities, including, but not limited to, investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. Interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. The amount of receipts and other income from investment assets and activities is in this state if assets are assigned to a regular place of business of the taxpayer within this state.
- (b) The amount of receipts from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts otherwise sourced in this section, are in this state if the assets are assigned to a regular place of business of the taxpayer within this state.
- (7) Interest charged to customers for carrying debit balances on margin accounts without deduction of any costs incurred in carrying the accounts is in this state if the customer is located in this state.
- (8) Interest from loans secured by real property is in this state if the property is located in this state, if the property is located both within this state and 1 or more other states and more than 50% of the fair market value of the real property is located in this state, and if more than 50% of the fair market value of the real property is not located within any 1 state but the borrower is located in this state.
- (9) Interest from loans not secured by real property is in this state if the borrower is located in this state.
- (10) Net gains from the sale of loans secured by real property or mortgage service rights relating to real property are in this state if the property is in this state, if the property is located both

within this state and 1 or more other states and more than 50% of the fair market value of the real property is located within this state, or if more than 50% of the fair market value of the real property is not located in any 1 state, but the borrower is located in this state.

(11) Net gains from the sale of loans not secured by real property or any other intangible assets are in this state if the depositor or borrower is located in this state.

(12) Receipts from the lease of real property are in this state if the property is located in this state.

(13) Receipts from the lease of tangible personal property are in this state if the property is located in this state when it is first placed in service by the lessee.

(14) Receipts from the lease of transportation tangible personal property are in this state if the property is used in this state or if the extent of use of the property within this state cannot be determined but the property has its principal base of operations within this state.

### CHAPTER 3

208.301 Tax base; apportionment; allocation; taxpayer subject to tax in another state; circumstances.

(1) Except as otherwise provided in this act, each tax base established under this act shall be apportioned in accordance with this chapter.

(2) Each tax base of a taxpayer whose business activities are confined solely to this state shall be allocated to this state. Each tax base of a taxpayer whose business activities are subject to tax both within and outside of this state shall be apportioned to this state by multiplying each tax base by the sales factor calculated under section 303.

(3) A taxpayer is subject to tax in another state in either of the following circumstances:

(a) The taxpayer is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax.

(b) That state has jurisdiction to subject the taxpayer to 1 or more of the taxes listed in subdivision (a) regardless of whether that state does or does not subject the taxpayer to that tax.

208.303 Sales factor; calculation.

(1) Except as otherwise provided in subsection (2) and section 311, the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year.

(2) Except as otherwise provided under this subsection, for a taxpayer that is a unitary business group, sales include sales in this state of every person included in the unitary business group without regard to whether the person has nexus in this state. Sales between persons included in a unitary business group must be eliminated in calculating the sales factor.

(3) It is the intent of the legislature that each tax base of a taxpayer is apportioned to this state by multiplying each tax base by the sales factor multiplied by 100% and that apportionment shall

not be based on property, payroll or any other factor notwithstanding section 309 of this act and MCL 205.581.

### 208.305 Taxpayer; determination of sales.

(1) Sales of the taxpayer in this state are determined as follows:

(a) Sales of tangible personal property are in this state if the property is shipped or delivered, or, in the case of electricity and gas, the contract requires the property to be shipped or delivered, to any purchaser within this state based on the destination at the point that the property comes to rest regardless of the free on board point or other conditions of the sales.

(b) Receipts from the sale, lease, rental, or licensing of real property are in this state if that property is located in this state.

(c) Receipts from the lease or rental or licensing of tangible personal property are sales in this state to the extent that the property is used in this state. The extent of usage of tangible personal property in this state is determined by multiplying the receipts by a fraction, the numerator of which is the number of days of physical location of the property in this state during the lease or rental period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all lease or rental periods in the tax year. If the physical location of the property during the lease or rental period is unknown or cannot be determined, the tangible personal property is utilized in the state in which the property was located at the time the lease or rental payer obtained possession. Prewritten computer software is used in this state when the computer hardware accessing the software is physically located in this state.

(d) Receipts from the lease or rental of mobile transportation property owned by the taxpayer are in this state to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's sales factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of the fraction is the number of landings of the aircraft in this state and the denominator of the fraction is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the receipts are in this state if the property has its principal base of operations in this state.

(e) Royalties and other income received for the use of or for the privilege of using intangible property, including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, custom computer software, or similar items, are attributed to the state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the royalties or other income shall be excluded from both the numerator and the denominator. Intangible property is used in this state if the purchaser uses the intangible property or the rights to the intangible property in the regular course of its business operations in this state, regardless of the location of the purchaser's customers.

(2) Sales from the performance of services are in this state and attributable to this state as follows:

(a) Except as otherwise provided in this section, all receipts from the performance of services are included in the numerator of the apportionment factor if the recipient of the services receives all of the benefit of the services in this state. If the recipient of the services receives some of the benefit of the services in this state, the receipts are included in the numerator of the apportionment factor in proportion to the extent that the recipient receives benefit of the services in this state. The benefit of a service is received in this state in the following:

- 1) The service relates to real property that is located entirely in this state.
- 2) The service relates to tangible personal property that (a) is owned or leased by the purchaser and located in this state at the time that the service is received, or (b) is delivered to the purchaser or the purchaser's designee(s) in this state.
- 3) The service is provided to a purchaser who is an individual physically present in this state at the time that the service is received.
- 4) The services are received in this state and are in the nature of personal services, such as consulting, counseling, training, speaking, and providing entertainment, that are typically conducted or performed first-hand, on a direct, one-to-one or one-to-many basis.
- 5) The service is provided to a purchaser that is engaged in a trade or business in this state and relates only to the trade or business of that purchaser in this state.
- 6) The service relates to the use of intangible property such as custom computer software (other than prewritten computer software), licenses, designs, processes, patents, and copyrights, which is used entirely in this state.
- 7) The services provided are professional in nature, such as legal or accounting services, and are provided to a purchaser that is an individual domiciled in this state, or to a purchaser with business operations only in Michigan.

(b) Sales derived from securities brokerage services attributable to this state are determined by multiplying the total dollar amount of receipts from securities brokerage services by a fraction, the numerator of which is the sales of securities brokerage services to customers within this state, and the denominator of which is the sales of securities brokerage services to all customers. Receipts from securities brokerage services include commissions on transactions, the spread earned on principal transactions in which the broker buys or sells from its account, total margin interest paid on behalf of brokerage accounts owned by the broker's customers, and fees and receipts of all kinds from the underwriting of securities. If receipts from brokerage services can be associated with a particular customer, but it is impractical to associate the receipts with the address of the customer, then the address of the customer shall be presumed to be the address of the branch office that generates the transactions for the customer.

(c) Sales of services that are derived directly or indirectly from the sale of management, distribution, administration, or securities brokerage services to, or on behalf of, a regulated investment company or its beneficial owners, including receipts derived directly or indirectly from trustees, sponsors, or participants of employee benefit plans that have accounts in a

regulated investment company, shall be attributable to this state to the extent that the shareholders of the regulated investment company are domiciled within this state. For purposes of this subdivision, "domicile" means the shareholder's mailing address on the records of the regulated investment company. If the regulated investment company or the person providing management services to the regulated investment company has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, then the shareholder's primary residence or principal place of business is the shareholder's domicile. A separate computation shall be made with respect to the receipts derived from each regulated investment company. The total amount of sales attributable to this state shall be equal to the total receipts received by each regulated investment company multiplied by a fraction determined as follows:

- (i) The numerator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by the regulated investment company shareholders who have their domicile in this state.
  - (ii) The denominator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by all shareholders.
  - (iii) For purposes of the fraction, the year shall be the tax year of the regulated investment company that ends with or within the tax year of the taxpayer.
- (3) Receipts from the origination of a loan or gains from the sale of a loan secured by residential real property is deemed a sale in this state only if 1 or more of the following apply:
- (a) The real property is located in this state.
  - (b) The real property is located both within this state and 1 or more other states and more than 50% of the fair market value of the real property is located within this state.
  - (c) More than 50% of the real property is not located in any 1 state and the borrower is located in this state.
- (4) Interest from loans secured by real property is in this state if the property is located within this state or if the property is located both within this state and 1 or more other states, if more than 50% of the fair market value of the real property is located within this state, or if more than 50% of the fair market value of the real property is not located within any 1 state, if the borrower is located in this state. The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.
- (5) Interest from a loan not secured by real property is in this state if the borrower is located in this state.
- (6) Gains from the sale of a loan not secured by real property, including income recorded under the coupon stripping rules of section 1286 of the internal revenue code, are in this state if the borrower is in this state.
- (7) Receipts from credit card receivables, including interest, fees, and penalties from credit card receivables and receipts from fees charged to cardholders, such as annual fees, are in this state if the billing address of the cardholder is in this state.
- (8) Receipts from the sale of credit card or other receivables are in this state if the billing address of the customer is in this state. Credit card issuer's reimbursements fees are in this state if the

billing address of the cardholder is in this state. Receipts from merchant discounts, computed net of any cardholder chargebacks, but not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders, are in this state if the commercial domicile of the merchant is in this state.

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

(10) Receipts from the sale of securities and other assets from investment and trading activities, including, but not limited to, interest, dividends, and gains are in this state in either of the following circumstances:

(a) The person's customer is in this state.

(b) If the location of the person's customer cannot be determined, both of the following:

(i) Interest, dividends, and other income from investment assets and activities and from trading assets and activities, including, but not limited to, investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. Interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. The amount of receipts and other income from investment assets and activities is in this state if assets are assigned to a regular place of business of the taxpayer within this state.

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

(11) Receipts from transportation services rendered by a person subject to tax in another state are in this state and shall be attributable to this state as follows:

(a) Except as otherwise provided in subdivisions (b) through (e), receipts shall be proportioned based on the ratio that revenue miles of the person in this state bear to the revenue miles of the person everywhere.

(b) Receipts from maritime transportation services shall be attributable to this state as follows:

(i) 50% of those receipts that either originate or terminate in this state.

(ii) 100% of those receipts that both originate and terminate in this state.

(c) Receipts attributable to this state of a person whose business activity consists of the transportation both of property and of individuals shall be proportioned based on the total gross receipts for passenger miles and ton mile fractions, separately computed and individually weighted by the ratio of gross receipts from passenger transportation to total gross receipts from all transportation, and by the ratio of gross receipts from freight transportation to total gross receipts from all transportation, respectively.

(d) Receipts attributable to this state of a person whose business activity consists of the transportation of oil by pipeline shall be proportioned based on the ratio that the gross receipts for the barrel miles transported in this state bear to the gross receipts for the barrel miles transported by the person everywhere.

(e) Receipts attributable to this state of a person whose business activities consist of the transportation of gas by pipeline shall be proportioned based on the ratio that the gross receipts for the 1,000 cubic feet miles transported in this state bear to the gross receipts for the 1,000 cubic feet miles transported by the person everywhere.

(12) For purposes of subsection (11), if a taxpayer can show that revenue mile information is not available or cannot be obtained without unreasonable expense to the taxpayer, receipts attributable to this state shall be that portion of the revenue derived from transportation services everywhere performed that the miles of transportation services performed in this state bears to the miles of transportation services performed everywhere. If the department determines that the information required for the calculations under subsection (11) are not available or cannot be obtained without unreasonable expense to the taxpayer, the department may use other available information that in the opinion of the department will result in an equitable allocation of the taxpayer's receipts to this state.

(13) Except as provided in subsections (14) through (19), receipts from the sale of telecommunications service or mobile telecommunications service are in this state if the customer's place of primary use of the service is in this state. As used in this subsection, "place of primary use" means the customer's residential street address or primary business street address where the customer's use of the telecommunications service primarily occurs. For mobile telecommunications service, the customer's residential street address or primary business street address is the place of primary use only if it is within the licensed service area of the customer's home service provider.

(14) Receipts from the sale of telecommunications service sold on an individual call-by-call basis are in this state if either of the following applies:

(a) The call both originates and terminates in this state.

(b) The call either originates or terminates in this state and the service address is located in this state.

(15) Receipts from the sale of postpaid telecommunications service are in this state if the origination point of the telecommunication signal, as first identified by the service provider's telecommunication system or as identified by information received by the seller from its service provider if the system used to transport telecommunication signals is not the seller's, is located in this state.

(16) Receipts from the sale of prepaid telecommunications service or prepaid mobile telecommunications service are in this state if the purchaser obtains the prepaid card or similar

means of conveyance at a location in this state. Receipts from recharging a prepaid telecommunications service or mobile telecommunications service is in this state if the purchaser's billing information indicates a location in this state.

(17) Receipts from the sale of private communication services are in this state as follows:

(a) 100% of the receipts from the sale of each channel termination point within this state.

(b) 100% of the receipts from the sale of the total channel mileage between each termination point within this state.

(c) 50% of the receipts from the sale of service segments for a channel between 2 customer channel termination points, 1 of which is located in this state and the other is located outside of this state, which segments are separately charged.

(d) The receipts from the sale of service for segments with a channel termination point located in this state and in 2 or more other states or equivalent jurisdictions, and which segments are not separately billed, are in this state based on a percentage determined by dividing the number of customer channel termination points in this state by the total number of customer channel termination points.

(18) Receipts from the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser's customers. If the location of the purchaser's customers is not known or cannot be determined, the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser.

(19) Receipts to access a carrier's network or from the sale of telecommunications services for resale are in this state as follows:

(a) 100% of the receipts from access fees attributable to intrastate telecommunications service that both originates and terminates in this state.

(b) 50% of the receipts from access fees attributable to interstate telecommunications service if the interstate call either originates or terminates in this state.

(c) 100% of the receipts from interstate end user access line charges, if the customer's service address is in this state. As used in this subdivision, "interstate end user access line charges" includes, but is not limited to, the surcharge approved by the federal communications commission and levied pursuant to 47 CFR 69.

(d) Gross receipts from sales of telecommunications services to other telecommunication service providers for resale shall be sourced to this state using the apportionment concepts used for non-resale receipts of telecommunications services if the information is readily available to make that determination. If the information is not readily available, then the taxpayer may use any other reasonable and consistent method.

(20) Terms used in subsections (13) through (20) have the same meaning as those terms defined in the streamlined sales and use tax agreement administered under the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833.

(21) For purposes of this section, a borrower is considered located in this state if the borrower's billing address is in this state.

208.309 Apportionment; petition; alternate method; rebuttable presumption that apportionment provisions fairly represent business activity; return or amended return not considered as petition.

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

(a) Separate accounting.

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

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

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

(3) The apportionment provisions of this act shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.

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

208.311 Receipts; source.

All other receipts not otherwise sourced under this act shall be sourced based on where the benefit to the customer is received or, if where the benefit to the customer is received cannot be determined, to the customer's billing address.

## CHAPTER 4

208.401 Small Business Credit.

(1) The credit provided in this section shall be taken before any other credit under this act and is available to any corporation, other than those taxpayers subject to the tax imposed under chapters 2A or 2B, with gross receipts that do not exceed \$20,000,000.00 and with adjusted business income minus the loss adjustment that does not exceed \$1,300,000.00 as adjusted annually for inflation using the Detroit consumer price index and subject to the following:

(a) A corporation is disqualified if either of the following occur for the respective tax year:

(i) Compensation and directors' fees of a shareholder or officer exceed \$180,000.00.

(ii) The sum of the following amounts exceeds \$180,000.00:

(A) Compensation and directors' fees of a shareholder.

(B) The product of the percentage of outstanding ownership or of outstanding stock owned by that shareholder multiplied by the difference between the sum of business income and, to the extent deducted in determining federal taxable income, a carryback or a carryover of a net operating loss or capital loss, minus the loss adjustment.

(c) Subject to the reduction percentage determined under subsection (3), the credit determined under this subsection shall be reduced by the following percentages in the following circumstances:

(i) If compensation and directors' fees of a shareholder or officer are, or if the sum of the amounts in subdivision (a)(ii)(A) and (B) is, more than \$160,000.00 but less than \$165,000.00, the credit is reduced by 20%.

(ii) If compensation and directors' fees of a shareholder or officer are, or if the sum of the amounts in subdivision (a)(ii)(A) and (B) is, \$165,000.00 or more but less than \$170,000.00, the credit is reduced by 40%.

(iii) If compensation and directors' fees of a shareholder or officer are, or if the sum of the amounts in subdivision (a)(ii)(A) and (B) is, \$170,000.00 or more but less than \$175,000.00, the credit is reduced by 60%.

(iv) If compensation and directors' fees of a shareholder or officer are, or if the sum of the amounts in subdivision (a)(ii)(A) and (B) is, \$175,000.00 or more but not in excess of \$180,000.00, the credit is reduced by 80%.

(2) For the purposes of determining disqualification under subsection (1), an active shareholder's share of business income shall not be attributed to another active shareholder.

(3) The reduction percentage is the greater of the following:

(a) The reduction percentage based on the compensation and directors' fees of the shareholder or officer with the greatest amount of compensation and directors' fees.

(b) The reduction percentage based on the sum of the amounts in subsection (1)(a)(ii)(A) and (B) for the shareholder or officer with the greatest sum of the amounts in subsection (1)(a)(ii)(A) and (B).

(4) A corporation that qualifies under subsection (1) is allowed a credit against the tax imposed under this act. The credit under this subsection is the amount by which the tax imposed under this act exceeds 1.8% of adjusted business income.

(5) If gross receipts exceed \$19,000,000.00, the credit shall be reduced by a fraction, the numerator of which is the amount of gross receipts over \$19,000,000.00 and the denominator of which is \$1,000,000.00. The credit shall not exceed 100% of the tax liability imposed under this act.

(6) For a corporation that reports for a tax year less than 12 months, the amounts specified in this section for gross receipts, adjusted business income, and share of business income shall be multiplied by a fraction, the numerator of which is the number of months in the tax year and the denominator of which is 12.

(7) The department shall permit a corporation that elects to claim the credit allowed under this section based on the amount by which the tax imposed under this act exceeds the percentage of adjusted business income for the tax year as determined under subsection (4), and that is not

required to reduce the credit pursuant to subsection (1) or (5), to file and pay the tax imposed by this act without computing the tax imposed under sections 201.

(8) Compensation paid by a professional employer organization to the officers of the client and to employees of the professional employer organization who are assigned or leased to and perform services for the client shall be included in determining eligibility of the client under this section.

(9) As used in this section:

(a) "Active shareholder" means a shareholder who receives at least \$10,000.00 in compensation, directors' fees, or dividends from the business, and who owns at least 5% of the outstanding stock or other ownership interest.

(b) "Adjusted business income" means business income as defined in section 105 with all of the following adjustments:

(i) Add compensation and directors' fees of active shareholders of a corporation.

(ii) Add, to the extent deducted in determining federal taxable income, a carryback or a carryover of a net operating loss.

(iii) Add, to the extent deducted in determining federal taxable income, a capital loss.

(iv) Add compensation and directors' fees of officers of a corporation.

(c) "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the United States department of labor, bureau of labor statistics.

(d) "Officer" means an officer of a corporation including all of the following:

(i) The chairperson of the board.

(ii) The president, vice president, secretary, or treasurer of the corporation or board.

(iii) Persons performing similar duties to persons described in subdivisions (i) and (ii).

(e) "Professional employer organization" means an organization, other than an organization whose business activities are included in industry group 736 under the standard industrial classification code as compiled by the United States department of labor, that provides the management and administration of the human resources of another entity by contractually assuming substantial employer rights and responsibilities through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

(i) Maintaining a right of direction and control of employees' work, although this responsibility may be shared with the other entity.

(ii) Paying wages and employment taxes of the employees out of its own accounts.

(iii) Reporting, collecting, and depositing state and federal employment taxes for the employees.

(iv) Retaining a right to hire and fire employees.

(10) As used in this section, "gross receipts" means the entire amount received by the corporation from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others except for the following:

- (a) Proceeds from sales by a principal that the corporation collects in an agency capacity solely on behalf of the principal and delivers to the principal.
- (b) Amounts received by the corporation as an agent solely on behalf of the principal that are expended by the corporation for any of the following:
  - (i) The performance of a service by a third party for the benefit of the principal that is required by law to be performed by a licensed person.
  - (ii) The performance of a service by a third party for the benefit of the principal that the corporation has not undertaken a contractual duty to perform.
  - (iii) Principal and interest under a mortgage loan or land contract, lease or rental payments, or taxes, utilities, or insurance premiums relating to real or personal property owned or leased by the principal.
  - (iv) A capital asset of a type that is, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated cost recovery by the principal for federal income tax purposes, or for real property owned or leased by the principal.
  - (v) Property not described under subparagraph (iv) purchased by the corporation on behalf of the principal and that the corporation does not take title to or use in the course of performing its contractual business activities.
  - (vi) Fees, taxes, assessments, levies, fines, penalties, or other payments established by law that are paid to a governmental entity and that are the legal obligation of the principal.
- (c) Amounts that are excluded from gross income of a foreign corporation engaged in the international operation of aircraft under section 883(a) of the internal revenue code.
- (d) Amounts received by an advertising agency used to acquire advertising media time, space, production, or talent on behalf of another person.
- (e) Notwithstanding any other provision of this section, amounts received by a corporation that manages real property owned by the corporation's client that are deposited into a separate account kept in the name of the corporation's client and that are not reimbursements to the corporation and are not indirect payments for management services that the corporation provides to that client.
- (f) Proceeds from the corporation's transfer of an account receivable if the sale that generated the account receivable was included in gross receipts for federal income tax purposes. This subdivision does not apply to a corporation that during the tax year both buys and sells any receivables.
- (g) Proceeds from any of the following:
  - (i) The original issue of stock or equity instruments.
  - (ii) The original issue of debt instruments.
- (h) Refunds from returned merchandise.
- (i) Cash and in-kind discounts.
- (j) Trade discounts.
- (k) Federal, state, or local tax refunds.
- (l) Security deposits.

- (m) Payment of the principal portion of loans.
- (n) Value of property received in a like-kind exchange.
- (o) Proceeds from a sale, transaction, exchange, involuntary conversion, or other disposition of tangible, intangible, or real property that is a capital asset as defined in section 1221(a) of the internal revenue code or land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code, less any gain from the disposition to the extent that gain is included in federal taxable income.
- (p) The proceeds from a policy of insurance, a settlement of a claim, or a judgment in a civil action less any proceeds under this subdivision that are included in federal taxable income.

## CHAPTER 5

### 208.501 Estimated return and payment.

- (1) A taxpayer that reasonably expects liability for the tax year to exceed \$800.00 shall file an estimated return and pay an estimated tax for each quarter of the taxpayer's tax year.
- (2) For taxpayers on a calendar year basis, the quarterly returns and estimated payments shall be made by April 15, July 15, October 15, and January 15. Taxpayers not on a calendar year basis shall file quarterly returns and make estimated payments on the appropriate due date which in the taxpayer's fiscal year corresponds to the calendar year.
- (3) Except as otherwise provided under this subsection, the estimated payment made with each quarterly return of each tax year shall be for the estimated corporate income tax base and franchise tax base for the quarter or 25% of the estimated annual liability. The second, third, and fourth estimated payments in each tax year shall include adjustments, if necessary, to correct underpayments or overpayments from previous quarterly payments in the tax year to a revised estimate of the annual tax liability. For a taxpayer that calculates and pays estimated payments for federal income tax purposes pursuant to section 6655(e) of the internal revenue code, that taxpayer may use the same methodology as used to calculate the annualized income installment or the adjusted seasonal installment, whichever is used as the basis for the federal estimated payment, to calculate the estimated payments required each quarter under this section (4) The interest and penalty provided by this act shall not be assessed if any of the following occur:
  - (a) If the sum of the estimated payments equals at least 85% of the liability and the amount of each estimated payment reasonably approximates the tax liability incurred during the quarter for which the estimated payment was made.
  - (b) For the 2012 tax year and each subsequent tax year, if the preceding year's tax liability under this act was \$20,000.00 or less and if the taxpayer submitted 4 equal installments the sum of which equals the immediately preceding tax year's tax liability.
- (4) Each estimated return shall be made on a form prescribed by the department and shall include an estimate of the annual tax liability and other information required by the state treasurer. The form prescribed under this subsection may be combined with any other tax reporting form prescribed by the department.

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

(6) Payments made under this section shall be a credit against the payment required with the annual tax return required in section 505.

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

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

#### 208.503 Computation of tax for portion of year.

If a taxpayer's tax year to which this act applies ends before December 31, 2012 then a taxpayer subject to this act may elect to compute the tax imposed by this act for the portion of that tax year to which this act applies or that first tax year in accordance with 1 of the following methods:

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

(b) The tax may be computed by determining the corporate income tax base and franchise tax base in the first tax year in accordance with an accounting method satisfactory to the department that reflects the actual business income tax base and franchise tax base attributable to the period.

#### 208.505 Annual or final return; date of filing; extension.

(1) An annual or final return shall be filed with the department in the form and content prescribed by the department by the last day of the fourth month after the end of the taxpayer's tax year. Any final liability shall be remitted with this return. A taxpayer, other than a taxpayer subject to the tax imposed under chapter 2A, whose tax liability under this act is less than or equal to \$100.00 does not need to file a return or pay the tax imposed under this act.

(2) The department, upon application of the taxpayer and for good cause shown, may extend the date for filing the annual return. Interest at the rate under section 23(2) of 1941 PA 122, MCL 205.23, shall be added to the amount of the tax unpaid for the period of the extension. The treasurer shall require with the application payment of the estimated tax liability unpaid for the tax period covered by the extension.

(3) If a taxpayer is granted an extension of time within which to file the federal income tax return for any tax year, the filing of a copy of the request for extension together with a tentative return and payment of an estimated tax with the department by the due date provided in subsection (1) shall automatically extend the due date for the filing of an annual or final return under this act

until the last day of the eighth month following the original due date of the return. Interest at the rate under section 23(2) of 1941 PA 122, MCL 205.23, shall be added to the amount of the tax unpaid for the period of the extension.

#### 208.507 Return; filing; true and correct copy; amended return.

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

(2) A taxpayer shall file an amended return with the department showing any alteration in or modification of a federal income tax return that affects its corporate income tax base or franchise tax base under this act. The amended return shall be filed within 120 days after the final determination by the internal revenue service.

#### 208.509 Information return required by internal revenue code; filing required.

At the request of the department, a taxpayer required by the internal revenue code to file or submit an information return of income paid to others shall, to the extent the information is applicable to residents of this state, at the same time file or submit the information in the form and content prescribed to the department.

#### 208.511 Unitary business group; filing.

A unitary business group shall file a combined return that includes each United States person, other than a foreign operating entity, that is included in the unitary business group. Each United States person included in a unitary business group or included in a combined return shall be treated as a single person and all transactions between those persons included in the unitary business group shall be eliminated from the corporate income tax base, franchise tax base, and the apportionment formula under this act. If a United States person included in a unitary business group or included in a combined return is subject to the tax under chapter 2A or 2B any corporate income attributable to that person shall be eliminated from the corporate income tax base and any sales attributable to that person shall be eliminated from the apportionment formula under this act.

#### 208.513 Administration of tax; rules; forms; preparation and publication of statistics.

(1) The tax imposed by this act shall be administered by the department of treasury pursuant to 1941 PA 122, MCL 205.1 to 205.31, and this act. If a conflict exists between 1941 PA 122, MCL 205.1 to 205.31, and this act, the provisions of this act apply.

(2) The department may promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The department shall prescribe forms for use by taxpayers and may promulgate rules in conformity with this act for the maintenance by taxpayers of records, books, and accounts, and for the computation of the tax, the manner and time of changing or electing accounting methods

and of exercising the various options contained in this act, the making of returns, and the ascertainment, assessment, and collection of the tax imposed under this act.

(4) The tax imposed by this act is in addition to all other taxes for which the taxpayer may be liable.

(5) The department shall prepare and publish statistics from the records kept to administer the tax imposed by this act that detail the distribution of tax receipts by type of business, legal form of organization, sources of tax base, timing of tax receipts, and types of deductions. The statistics shall not result in the disclosure of information regarding any specific taxpayer.

#### 208.515 Distribution to general fund-

The revenue collected under this act shall be distributed to the general fund.

#### 208.517 Implementation of act; appropriation; carrying forward unexpended funds.

There is appropriated to the department for the 2011-2012 state fiscal year the sum of \$XX,000,000.00 to begin implementing the requirements of this act. Any portion of this amount under this section that is not expended in the 2011-2012 state fiscal year shall not lapse to the general fund but shall be carried forward in a work project account that is in compliance with section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a, for the following state fiscal year.

#### 208.519 Severability of provisions.

If a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired determines that any provision of this act that provides a deduction, credit, or exemption with respect to employment, persons, services, investment, or any other activity that is limited only to this state is unconstitutional or applies to employment, persons, services, investment, or any other activity outside of this state, that credit, deduction, or exemption shall be severed and shall not be in effect for any other tax year for which the final order shall apply, and the remaining provisions of this act shall remain in effect.