

# SENATE BILL No. 1055

January 23, 2008, Introduced by Senators McMANUS and CASSIS and referred to the Committee on Finance.

A bill to amend 2007 PA 36, entitled  
"Michigan business tax act,"  
by amending section 305 (MCL 208.1305), as amended by 2007 PA 205.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 305. (1) Sales of the taxpayer in this state are  
2       determined as follows:

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

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

4 (c) Receipts from the lease or rental of tangible personal  
5 property are sales in this state to the extent that the property is  
6 utilized in this state. The extent of utilization of tangible  
7 personal property in this state is determined by multiplying the  
8 receipts by a fraction, the numerator of which is the number of  
9 days of physical location of the property in this state during the  
10 lease or rental period in the tax year and the denominator of which  
11 is the number of days of physical location of the property  
12 everywhere during all lease or rental periods in the tax year. If  
13 the physical location of the property during the lease or rental  
14 period is unknown or cannot be determined, the tangible personal  
15 property is utilized in the state in which the property was located  
16 at the time the lease or rental payer obtained possession.

17 (d) Receipts from the lease or rental of mobile transportation  
18 property owned by the taxpayer are in this state to the extent that  
19 the property is used in this state. The extent an aircraft will be  
20 deemed to be used in this state and the amount of receipts that is  
21 to be included in the numerator of this state's sales factor is  
22 determined by multiplying all the receipts from the lease or rental  
23 of the aircraft by a fraction, the numerator of the fraction is the  
24 number of landings of the aircraft in this state and the  
25 denominator of the fraction is the total number of landings of the  
26 aircraft. If the extent of the use of any transportation property  
27 within this state cannot be determined, then the receipts are in

1 this state if the property has its principal base of operations in  
2 this state.

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

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

20 (a) Except as otherwise provided in this section, all receipts  
21 from the performance of services are included in the numerator of  
22 the apportionment factor if the recipient of the services receives  
23 all of the benefit of the services in this state. If the recipient  
24 of the services receives some of the benefit of the services in  
25 this state, the receipts are included in the numerator of the  
26 apportionment factor in proportion to the extent that the recipient  
27 receives benefit of the services in this state.

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

17           (c) Sales of services that are derived directly or indirectly  
18    from the sale of management, distribution, administration, or  
19    securities brokerage services to, or on behalf of, a regulated  
20    investment company or its beneficial owners, including receipts  
21    derived directly or indirectly from trustees, sponsors, or  
22    participants of employee benefit plans that have accounts in a  
23    regulated investment company, shall be attributable to this state  
24    to the extent that the shareholders of the regulated investment  
25    company are domiciled within this state. For purposes of this  
26    subdivision, "domicile" means the shareholder's mailing address on  
27    the records of the regulated investment company. If the regulated

1 investment company or the person providing management services to  
2 the regulated investment company has actual knowledge that the  
3 shareholder's primary residence or principal place of business is  
4 different than the shareholder's mailing address, then the  
5 shareholder's primary residence or principal place of business is  
6 the shareholder's domicile. A separate computation shall be made  
7 with respect to the receipts derived from each regulated investment  
8 company. The total amount of sales attributable to this state shall  
9 be equal to the total receipts received by each regulated

10 investment company multiplied by a fraction determined as follows:

11 (i) The numerator of the fraction is the average of the sum of  
12 the beginning-of-year and end-of-year number of shares owned by the  
13 regulated investment company shareholders who have their domicile  
14 in this state.

15 (ii) The denominator of the fraction is the average of the sum  
16 of the beginning-of-year and end-of-year number of shares owned by  
17 all shareholders.

18 (iii) For purposes of the fraction, the year shall be the tax  
19 year of the regulated investment company that ends with or within  
20 the tax year of the taxpayer.

21 (3) Receipts from the origination of a loan or gains from the  
22 sale of a loan secured by residential real property is deemed a  
23 sale in this state only if 1 or more of the following apply:

24 (a) The real property is located in this state.

25 (b) The real property is located both within this state and 1  
26 or more other states and more than 50% of the fair market value of  
27 the real property is located within this state.

1 (c) More than 50% of the real property is not located in any 1  
2 state and the borrower is located in this state.

3 (4) Interest from loans secured by real property is in this  
4 state if the property is located within this state or if the  
5 property is located both within this state and 1 or more other  
6 states, if more than 50% of the fair market value of the real  
7 property is located within this state, or if more than 50% of the  
8 fair market value of the real property is not located within any 1  
9 state, if the borrower is located in this state. The determination  
10 of whether the real property securing a loan is located within this  
11 state shall be made as of the time the original agreement was made  
12 and any and all subsequent substitutions of collateral shall be  
13 disregarded.

14 (5) Interest from a loan not secured by real property is in  
15 this state if the borrower is located in this state.

16 (6) Gains from the sale of a loan not secured by real  
17 property, including income recorded under the coupon stripping  
18 rules of section 1286 of the internal revenue code, are in this  
19 state if the borrower is in this state.

20 (7) Receipts from credit card receivables, including interest,  
21 fees, and penalties from credit card receivables and receipts from  
22 fees charged to cardholders, such as annual fees, are in this state  
23 if the billing address of the cardholder is in this state.

24 (8) Receipts from the sale of credit card or other receivables  
25 is in this state if the billing address of the customer is in this  
26 state. Credit card issuer's reimbursements fees are in this state  
27 if the billing address of the cardholder is in this state. Receipts

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

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

19 (10) Receipts, **OTHER THAN RECEIPTS FROM TREASURY FUNCTIONS**  
20 **THAT ARE EMBEDDED WITHIN AN OPERATING ENTITY**, from the sale of  
21 securities and other assets from investment and trading activities,  
22 including, but not limited to, interest, dividends, and gains are  
23 in this state in either of the following circumstances:

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

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

27 (i) Interest, dividends, and other income from investment

1 assets and activities and from trading assets and activities,  
2 including, but not limited to, investment securities; trading  
3 account assets; federal funds; securities purchased and sold under  
4 agreements to resell or repurchase; options; futures contracts;  
5 forward contracts; notional principal contracts such as swaps;  
6 equities; and foreign currency transactions are in this state if  
7 the average value of the assets is assigned to a regular place of  
8 business of the taxpayer within this state. Interest from federal  
9 funds sold and purchased and from securities purchased under resale  
10 agreements and securities sold under repurchase agreements are in  
11 this state if the average value of the assets is assigned to a  
12 regular place of business of the taxpayer within this state. The  
13 amount of receipts and other income from investment assets and  
14 activities is in this state if assets are assigned to a regular  
15 place of business of the taxpayer within this state.

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

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

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



1 person everywhere.

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

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

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

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

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

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

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

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

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

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

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

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

11 (16) Receipts from the sale of prepaid telecommunications  
12 service or prepaid mobile telecommunications service are in this  
13 state if the purchaser obtains the prepaid card or similar means of  
14 conveyance at a location in this state. Receipts from recharging a  
15 prepaid telecommunications service or mobile telecommunications  
16 service is in this state if the purchaser's billing information  
17 indicates a location in this state.

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

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

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

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

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

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

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

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

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

24 (c) 100% of the receipts from interstate end user access line  
25 charges, if the customer's service address is in this state. As  
26 used in this subdivision, "interstate end user access line charges"  
27 includes, but is not limited to, the surcharge approved by the

1 federal communications commission and levied pursuant to 47 CFR 69.

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

9 (20) Except as otherwise provided under this subsection, for a  
10 taxpayer whose business activities include live radio or television  
11 programming as described in subsector code 7922 of industry group  
12 792 under the standard industrial classification code as compiled  
13 by the United States department of labor or are included in  
14 industry groups 483, 484, 781, or 782 under the standard industrial  
15 classification code as compiled by the United States department of  
16 labor, or any combination of the business activities included in  
17 those groups, media receipts are in this state and attributable to  
18 this state only if the commercial domicile of the customer is in  
19 this state and the customer has a direct connection or relationship  
20 with the taxpayer pursuant to a contract under which the media  
21 receipts are derived. For media receipts from the sale of  
22 advertising, if the customer of that advertising is commercially  
23 domiciled in this state and receives some of the benefit of the  
24 sale of that advertising in this state, the media receipts from the  
25 advertising to that customer are included in the numerator of the  
26 apportionment factor in proportion to the extent that the customer  
27 receives the benefit of the advertising in this state. For purposes

1 of this subsection, if the taxpayer is a broadcaster and if the  
2 customer receives some of the benefit of the advertising in this  
3 state, the media receipts for that sale of advertising from that  
4 customer shall be proportioned based on the ratio that the  
5 broadcaster's viewing or listening audience in this state bears to  
6 its total viewing or listening audience everywhere. As used in this  
7 subsection:

8 (a) "Media property" means motion pictures, television  
9 programs, internet programs and websites, other audiovisual works,  
10 and any other similar property embodying words, ideas, concepts,  
11 images, or sound without regard to the means or methods of  
12 distribution or the medium in which the property is embodied.

13 (b) "Media receipts" means receipts from the sale, license,  
14 broadcast, transmission, distribution, exhibition, or other use of  
15 media property and receipts from the sale of media services. Media  
16 receipts do not include receipts from the sale of media property  
17 that is a consumer product that is ultimately sold at retail.

18 (c) "Media services" means services in which the use of the  
19 media property is integral to the performance of those services.

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

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