

HOUSE BILL No. 5400

October 31, 2007, Introduced by Rep. Gillard and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending sections 201, 203, 235, 263, 417, and 601 (MCL 208.1201, 208.1203, 208.1235, 208.1263, 208.1417, and 208.1601), section 201 as amended by 2007 PA 90; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 201. (1) Except as otherwise provided in this act, there
2 is levied and imposed a business income tax on every taxpayer with
3 business activity ~~within~~ **IN** this state unless prohibited by 15 USC
4 381 to 384. The business income tax is imposed on the business
5 income tax base, after allocation or apportionment to this state,

1 at the rate of 4.95%.

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

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

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

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

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

23 (e) To the extent included in federal taxable income, add the
24 loss or subtract the income from the business income tax base that
25 is attributable to another entity **OR PERSON** whose business
26 activities are taxable under this section or would be subject to
27 the tax under this section if the business activities were in this

1 state.

2 (f) Except as otherwise provided under this subdivision, to
3 the extent deducted in arriving at federal taxable income, add any
4 royalty, interest, or other expense paid to a ~~an~~ **AN ENTITY OR** person
5 related to the taxpayer by ownership or control for the use of an
6 intangible asset if the person is not included in the taxpayer's
7 unitary business group. The addition of any royalty, interest, or
8 other expense described under this subdivision is not required to
9 be added if the taxpayer can demonstrate that the transaction has a
10 nontax business purpose other than avoidance of this tax, is
11 conducted with arm's-length pricing and rates and terms as applied
12 in accordance with sections 482 and 1274(d) of the internal revenue
13 code, and satisfies 1 of the following:

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

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

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

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

24 (h) To the extent included in federal taxable income, deduct
25 any earnings that are net earnings from self-employment as defined
26 under section 1402 of the internal revenue code of the taxpayer or
27 a partner or limited liability company member of the taxpayer

1 except to the extent that those net earnings represent a reasonable
2 return on capital.

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

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

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

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

12 (3) The deduction under subsection (2)(i) shall not exceed the
13 amount necessary to offset the net deferred tax liability of the
14 taxpayer as computed in accordance with generally accepted
15 accounting principles which would otherwise result from the
16 imposition of the business income tax under this section and the
17 modified gross receipts tax under section 203 if the deduction
18 provided under this subdivision were not allowed. For purposes of
19 the calculation of the deduction under subsection (2)(i), a book-
20 tax difference shall only be used once in the calculation of the
21 deduction arising from the taxpayer's business income tax base
22 under this section and once in the calculation of the deduction
23 arising from the taxpayer's modified gross receipts tax base under
24 section 203. The adjustment under subsection (2)(i) shall be
25 calculated without regard to the federal effect of the deduction.
26 If the adjustment under subsection (2)(i) is greater than the
27 taxpayer's business income tax base, any adjustment that is unused

1 may be carried forward and applied as an adjustment to the
2 taxpayer's business income tax base before apportionment in future
3 years. In order to claim this deduction, the department may require
4 the taxpayer to report the amount of this deduction on a form as
5 prescribed by the department that is to be filed on or after the
6 date that the first quarterly return and estimated payment are due
7 under this act. As used in subsection (2)(i) and this subsection:

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

13 (b) "Qualifying asset" means any asset shown on the person's
14 books and records for the first fiscal period ending after July 12,
15 2007, in accordance with generally accepted accounting principles.

16 (4) For purposes of subsections (2) and (3), the business
17 income of a unitary business group is the sum of the business
18 income of each **ENTITY OR** person, other than a foreign operating
19 entity or a person subject to the tax imposed under chapter 2A or
20 2B, included in the unitary business group less any items of income
21 and related deductions arising from transactions including
22 dividends between persons included in the unitary business group.

23 (5) Deduct any available business loss incurred after December
24 31, 2007. As used in this subsection, "business loss" means a
25 negative business income taxable amount after allocation or
26 apportionment. The business loss shall be carried forward to the
27 year immediately succeeding the loss year as an offset to the

1 allocated or apportioned business income tax base, then
2 successively to the next 9 taxable years following the loss year or
3 until the loss is used up, whichever occurs first, but for not more
4 than 10 taxable years after the loss year.

5 Sec. 203. (1) Except as otherwise provided in this act, there
6 is levied and imposed a modified gross receipts tax on every
7 taxpayer with nexus as determined under section 200. The modified
8 gross receipts tax is imposed on the modified gross receipts tax
9 base, after allocation or apportionment to this state at a rate of
10 0.80%.

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

13 (3) The modified gross receipts tax base means a taxpayer's
14 gross receipts less purchases from other firms before apportionment
15 under this act. The modified gross receipts of a unitary business
16 group is the sum of modified gross receipts of each **ENTITY OR**
17 person, other than a foreign operating entity or a person subject
18 to the tax imposed under chapter 2A or 2B, included in the unitary
19 business group less any modified gross receipts arising from
20 transactions between **ENTITIES OR** persons included in the unitary
21 business group.

22 (4) For the 2008 tax year, deduct 65% of any remaining
23 business loss carryforward calculated under section 23b(h) of
24 former 1975 PA 228 that was actually incurred in the 2006 or 2007
25 tax year to the extent not deducted in tax years beginning before
26 January 1, 2008. A deduction under this subsection shall not
27 include any business loss carryforward that was incurred before

1 January 1, 2006. If the taxpayer is a unitary business group, the
2 business loss carryforward under this subsection may only be
3 deducted against the modified gross receipts tax base of that
4 **ENTITY OR** person included in the unitary business group calculated
5 as if the **ENTITY OR** person was not included in the unitary business
6 group.

7 (5) Nothing in this act shall prohibit a taxpayer who
8 qualifies for the credit under section 445 or a taxpayer who is a
9 dealer of new or used personal watercraft from collecting the tax
10 imposed under this section in addition to the sales price. The
11 amount remitted to the department for the tax under this section
12 shall not be less than the stated and collected amount.

13 Sec. 235. (1) ~~Each~~**AN** insurance company shall pay a ~~THE~~ tax
14 ~~determined~~**LEVIED AND IMPOSED** under this chapter.

15 (2) ~~The~~**AN INSURANCE COMPANY SHALL PAY A** tax ~~imposed by this~~
16 ~~chapter on each insurance company shall be a tax~~ equal to 1.25% of
17 gross direct premiums written on property or risk located or
18 residing in this state. Direct premiums do not include any of the
19 following:

20 (a) Premiums on policies not taken.

21 (b) Returned premiums on canceled policies.

22 (c) Receipts from the sale of annuities.

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

25 (e) The first \$190,000,000.00 of disability insurance premiums
26 written in this state, other than credit insurance and disability
27 income insurance premiums, of each insurance company subject to tax

1 under this chapter. This exemption shall be reduced by \$2.00 for
2 each \$1.00 by which the insurance company's gross direct premiums
3 from insurance carrier services in this state and outside this
4 state exceed \$280,000,000.00.

5 (3) The tax ~~calculated~~ **LEVIED AND IMPOSED** under this chapter
6 is in lieu of all other privilege or franchise fees or taxes
7 imposed by this act or any other law of this state, except taxes on
8 real and personal property, taxes collected under the general sales
9 tax act, 1933 PA 167, MCL 205.1 to 205.78, and taxes collected
10 under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, and
11 except as otherwise provided in the insurance code of 1956, 1956 PA
12 218, MCL 500.100 to 500.8302.

13 Sec. 263. (1) Every financial institution with nexus in this
14 state as determined under section 200 is subject to a franchise tax
15 **LEVIED AND IMPOSED UNDER THIS ACT**. The franchise tax is imposed
16 upon the tax base of the financial institution as determined under
17 section 265 after allocation or apportionment to this state, at the
18 rate of 0.235%.

19 (2) The tax under this chapter is in lieu of ~~the~~ **A** tax levied
20 and imposed under chapter 2 of this act.

21 Sec. 417. (1) The credit provided ~~in~~ **UNDER** this section shall
22 be taken after the credits under sections 403 and 405 and before
23 any other credit under this act and is available to any taxpayer
24 with gross receipts that do not exceed \$20,000,000.00 and with
25 adjusted business income minus the loss adjustment that does not
26 exceed \$1,300,000.00 as adjusted annually for inflation using the
27 Detroit consumer price index and subject to the following:

1 (a) An individual, a partnership, **A LIMITED PARTNERSHIP**, a
2 limited liability company, or a subchapter S corporation is
3 disqualified if the individual, any 1 partner of the partnership,
4 **ANY 1 PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the
5 limited liability company, or any 1 shareholder of the subchapter S
6 corporation receives more than \$180,000.00 as a distributive share
7 of the adjusted business income minus the loss adjustment of the
8 individual, the partnership, **THE LIMITED PARTNERSHIP**, the limited
9 liability company, or the subchapter S corporation.

10 (b) A corporation other than a subchapter S corporation is
11 disqualified if either of the following occur for the respective
12 tax year:

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

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

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

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

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

27 (i) If an individual, any 1 partner of the partnership, **ANY 1**

1 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
2 liability company, or any 1 shareholder of the subchapter S
3 corporation receives as a distributive share of adjusted business
4 income minus the loss adjustment of the individual, partnership,
5 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
6 corporation; if compensation and directors' fees of a shareholder
7 or officer of a corporation other than a subchapter S corporation
8 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
9 is more than \$160,000.00 but less than \$165,000.00, the credit is
10 reduced by 20%.

11 (ii) If an individual, any 1 partner of the partnership, **ANY 1**
12 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
13 liability company, or any 1 shareholder of the subchapter S
14 corporation receives as a distributive share of adjusted business
15 income minus the loss adjustment of the individual, partnership,
16 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
17 corporation; if compensation and directors' fees of a shareholder
18 or officer of a corporation other than a subchapter S corporation
19 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
20 is \$165,000.00 or more but less than \$170,000.00, the credit is
21 reduced by 40%.

22 (iii) If an individual, any 1 partner of the partnership, **ANY 1**
23 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
24 liability company, or any 1 shareholder of the subchapter S
25 corporation receives as a distributive share of adjusted business
26 income minus the loss adjustment of the individual, partnership,
27 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S

1 corporation; if compensation and directors' fees of a shareholder
2 or officer of a corporation other than a subchapter S corporation
3 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
4 is \$170,000.00 or more but less than \$175,000.00, the credit is
5 reduced by 60%.

6 (iv) If an individual, any 1 partner of the partnership, **ANY 1**
7 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
8 liability company, or any 1 shareholder of the subchapter S
9 corporation receives as a distributive share of adjusted business
10 income minus the loss adjustment of the individual, partnership,
11 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
12 corporation; if compensation and directors' fees of a shareholder
13 or officer of a corporation other than a subchapter S corporation
14 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
15 is \$175,000.00 or more but not in excess of \$180,000.00, the credit
16 is reduced by 80%.

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

20 (3) To determine the reduction percentage under subsection
21 (1) (c), the following apply:

22 (a) The reduction percentage for a partnership, **LIMITED**
23 **PARTNERSHIP**, limited liability company, or subchapter S corporation
24 is based on the distributive share of adjusted business income
25 minus loss adjustment of the partner, **LIMITED PARTNER**, member, or
26 shareholder with the greatest distributive share of adjusted
27 business income minus loss adjustment.

1 (b) The reduction percentage for a corporation other than a
2 subchapter S corporation is the greater of the following:

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

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

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

14 (5) If gross receipts exceed \$19,000,000.00, the credit shall
15 be reduced by a fraction, the numerator of which is the amount of
16 gross receipts over \$19,000,000.00 and the denominator of which is
17 \$1,000,000.00. The credit shall not exceed 100% of the tax
18 liability imposed under this act.

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

24 (7) The department shall permit a taxpayer that elects to
25 claim the credit allowed under this section based on the amount by
26 which the tax imposed under this act exceeds the percentage of
27 adjusted business income for the tax year as determined under

1 subsection (4), and that is not required to reduce the credit
2 pursuant to subsection (1) or (5), to file and pay the tax imposed
3 by this act without computing ~~the~~^A tax imposed under sections 201
4 and 203.

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

10 (9) As used in this section:

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

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

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

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

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

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

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

1 statistics.

2 (d) "Loss adjustment" means the amount by which adjusted
3 business income was less than zero in any of the 5 tax years
4 immediately preceding the tax year for which eligibility for the
5 credit under this section is being determined. In determining the
6 loss adjustment for a tax year, a taxpayer is not required to use
7 more of the taxpayer's total negative adjusted business income than
8 the amount needed to qualify the taxpayer for the credit under this
9 section. A taxpayer shall not be considered to have used any
10 portion of the taxpayer's negative adjusted business income amount
11 unless the portion used is necessary to qualify for the credit
12 under this section. A taxpayer shall not reuse a negative adjusted
13 business income amount used as a loss adjustment in a previous tax
14 year or use a negative adjusted business income amount from a year
15 in which the taxpayer did not receive the credit under this
16 section.

17 Sec. 601. (1) For the 2008 fiscal year, except as otherwise
18 provided under subsection (4), if total net cash payments from the
19 tax imposed under this act plus any net cash payments from former
20 1975 PA 228 less any net cash payments made by insurance companies
21 under ~~either act~~ **THIS ACT OR FORMER 1975 PA 228** exceed
22 \$2,398,000,000.00, 50% of that excess shall be refunded in the
23 immediately succeeding fiscal year as provided in subsection (5)
24 and the remaining 50% shall be deposited into the ~~countercyclical~~
25 ~~budget and economic stabilization fund. pursuant to section 353 of~~
26 ~~the management and budget act, 1984 PA 431, MCL 18.1353.~~

27 (2) For the 2009 fiscal year, except as otherwise provided

1 under subsection (4), if total net cash payments from the tax
2 imposed under this act, excluding any revenue collected pursuant to
3 chapter 2A, exceed the fiscal year 2009 base, 50% of that excess
4 shall be refunded in the immediately succeeding fiscal year as
5 provided in subsection (5) and the remaining 50% shall be deposited
6 into the ~~countercyclical budget and economic stabilization fund.~~
7 ~~pursuant to section 353 of the management and budget act, 1984 PA~~
8 ~~431, MCL 18.1353.~~ To calculate the fiscal year 2009 base, **THE**
9 **DEPARTMENT SHALL** multiply \$2,398,000,000.00 by 1.01 and then
10 multiply this product by 2009 fiscal year Michigan personal income
11 divided by 2008 fiscal year Michigan personal income.

12 (3) For the 2010 fiscal year, except as otherwise provided
13 under subsection (4), if total net cash payments from the tax
14 imposed under this act, excluding any revenue collected pursuant to
15 chapter 2A, exceed the fiscal year 2010 base, 50% of that excess
16 shall be refunded in the immediately succeeding fiscal year as
17 provided in subsection (5) and the remaining 50% shall be deposited
18 into the ~~countercyclical budget and economic stabilization fund.~~
19 ~~pursuant to section 353 of the management and budget act, 1984 PA~~
20 ~~431, MCL 18.1353.~~ To calculate the fiscal year 2010 base, **THE**
21 **DEPARTMENT SHALL** multiply \$2,398,000,000.00 by 1.0201 and then
22 multiply this product by 2010 fiscal year Michigan personal income
23 divided by 2008 fiscal year Michigan personal income.

24 (4) If the amount of the total net cash payments collected
25 from the tax imposed under this act, excluding any revenue
26 collected pursuant to chapter 2A, exceeds the amount described in
27 the applicable subsection by less than \$5,000,000.00, then all of

1 that excess shall be deposited into the ~~countercyclical budget and~~
 2 ~~economic stabilization fund. pursuant to section 353 of the~~
 3 ~~management and budget act, 1984 PA 431, MCL 18.1353.~~

4 (5) The refund ~~available~~ **AUTHORIZED** under subsection (1), (2),
 5 or (3) shall be applied pro rata to the taxpayers that made
 6 positive net cash payments during the fiscal year. The taxpayer's
 7 pro rata share shall be the total amount to be refunded under
 8 subsection (1), (2), or (3) multiplied by a fraction the numerator
 9 of which is the positive net payments made by the taxpayer during
 10 the fiscal year and the denominator of which is the sum of the
 11 positive net cash payments made by all taxpayers during the fiscal
 12 year.

13 (6) As used in this section:

14 (A) **"BUDGET STABILIZATION FUND" MEANS THE COUNTERCYCLICAL**
 15 **BUDGET AND ECONOMIC STABILIZATION FUND CREATED UNDER SECTION 351 OF**
 16 **THE MANAGEMENT AND BUDGET ACT, 1984 PA 431, MCL 18.1351.**

17 (B) ~~(a)~~ "Fiscal year" means the state fiscal year that
 18 commences October 1 and continues through September 30.

19 (C) ~~(b)~~ "Fiscal year Michigan personal income" ~~is~~ **MEANS** the
 20 average of the 4 quarterly values for the fiscal year, as published
 21 by the United States **DEPARTMENT OF COMMERCE**, bureau of economic
 22 analysis. Fiscal year personal income for subsection (2) is
 23 calculated using the personal income totals published in December
 24 2009. Fiscal year personal income for subsection (3) is calculated
 25 using the personal income totals published in December 2010.

26 (D) ~~(c)~~ "Net cash payments" for the fiscal year are equal to
 27 cash annual and estimated payments made during the fiscal year less

1 refunds paid during the fiscal year. Refunds paid under this
2 section are not used to reduce net cash payments for purposes of
3 calculating refunds paid out under this section.

4 Enacting section 1. (1) Section 6a of the use tax act, 1937 PA
5 94, MCL 205.96a, is repealed effective December 31, 2010.

6 (2) Sections 353c, 353e, and 353f of the management and budget
7 act, 1984 PA 431, MCL 18.1353c, 18.1353e, and 18.1353f, are
8 repealed.

9 Enacting section 2. This amendatory act takes effect January
10 1, 2008 and applies to all business activity occurring after
11 December 31, 2007.