

SENATE BILL No. 516

September 19, 2013, Introduced by Senators BOOHER and BRANDENBURG and referred to the Committee on Finance.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 651, 653, 655, and 657 (MCL 206.651, 206.653, 206.655, and 206.657), section 651 as amended by 2011 PA 171, section 653 as amended by 2011 PA 183, and sections 655 and 657 as added by 2011 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 651. As used in this chapter:

2 (A) "APPLICABLE CONTROLLED FOREIGN CORPORATION" MEANS A
3 CONTROLLED FOREIGN CORPORATION THAT SATISFIES ALL OF THE FOLLOWING:

4 (i) THE FINANCIAL INSTITUTION OWNS GREATER THAN 50% OF THE
5 OUTSTANDING INTEREST IN THE CONTROLLED FOREIGN CORPORATION.

1 (ii) CONSOLIDATED FINANCIAL REPORTING IS REQUIRED UNDER
2 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

3 (iii) THE CORPORATION HAS AT LEAST 80% OF ITS ACTIVE FOREIGN
4 BUSINESS INCOME RESULTING FROM FOREIGN INVESTMENT SOURCED
5 ACTIVITIES.

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

11 (C) ~~(b)~~—"Borrower is located in this state" or "credit card
12 holder is located in this state" means a borrower, other than a
13 credit card holder, that is engaged in a trade or business which
14 maintains its commercial domicile in this state, or a borrower that
15 is not engaged in a trade or business or a credit card holder whose
16 billing address is in this state.

17 (D) "CERTIFICATED CREDIT" MEANS THAT TERM AS DEFINED IN
18 SECTION 107 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL
19 208.1107.

20 (E) ~~(e)~~—"Commercial domicile" means the headquarters of the
21 trade or business, that is the place from which the trade or
22 business is principally managed and directed, or if a financial
23 institution is organized under the laws of a foreign country, of
24 the Commonwealth of Puerto Rico, or any territory or possession of
25 the United States, such financial institution's commercial domicile
26 shall be deemed for the purposes of this chapter to be the state of
27 the United States or the District of Columbia from which such

1 financial institution's trade or business in the United States is
2 principally managed and directed. It shall be presumed, subject to
3 rebuttal, that the location from which the financial institution's
4 trade or business is principally managed and directed is the state
5 of the United States or the District of Columbia to which the
6 greatest number of employees are regularly connected or out of
7 which they are working, irrespective of where the services of such
8 employees are performed, as of the last day of the tax year.

9 (F) "CONTROLLED FOREIGN CORPORATION" MEANS THAT TERM AS
10 DEFINED IN SECTION 957 OF THE INTERNAL REVENUE CODE.

11 (G) ~~(d)~~—"Credit card" means a credit, travel, or entertainment
12 card.

13 (H) ~~(e)~~—"Credit card issuer's reimbursement fee" means the fee
14 a financial institution receives from a merchant's bank because 1
15 of the persons to whom the financial institution has issued a
16 credit card has charged merchandise or services to the credit card.

17 (I) "EQUITY CAPITAL" MEANS THE TOTAL EQUITY CAPITAL OF THE
18 FINANCIAL INSTITUTION AS OF THE LAST DAY OF THE TAX YEAR AS
19 REPORTED ON ANY OF THE FOLLOWING FORMS, OR SUCCESSOR FORMS
20 DESIGNATED BY THE FFIEC, THAT ARE FILED WITH THE NATIONAL CREDIT
21 UNION ADMINISTRATION, THE OFFICE OF THE COMPTROLLER OF THE
22 CURRENCY, THE FEDERAL DEPOSIT INSURANCE CORPORATION, OR THE FEDERAL
23 RESERVE SYSTEM BY THE FINANCIAL INSTITUTION OR THE TOP-TIERED
24 PARENT ENTITY OF THE UNITARY BUSINESS GROUP OF WHICH THE FINANCIAL
25 INSTITUTION IS A MEMBER:

26 (i) THE CONSOLIDATED FINANCIAL STATEMENT FOR HOLDING COMPANIES,
27 FR Y-9C.

1 (ii) THE PARENT COMPANY ONLY FINANCIAL STATEMENTS FOR SMALL
2 HOLDING COMPANIES, FR Y-9SP.

3 (iii) THE CONSOLIDATED REPORTS OF CONDITION AND INCOME, CALL
4 REPORTS.

5 (J) "FFIEC" MEANS THE FEDERAL FINANCIAL INSTITUTIONS
6 EXAMINATION COUNCIL ESTABLISHED PURSUANT TO SECTION 1004 OF THE
7 FINANCIAL INSTITUTIONS REGULATORY AND INTEREST RATE CONTROL ACT OF
8 1978, PUBLIC LAW 95-630, 12 USC 3303.

9 (K) ~~(F)~~—"Financial institution" means any of the following:

10 (i) A bank holding company, a national bank, a state chartered
11 bank, a state chartered savings bank, a federally chartered savings
12 association, or a federally chartered farm credit system
13 institution.

14 (ii) Any entity, other than an entity subject to the tax
15 imposed under chapter 12, who is directly or indirectly owned by an
16 entity described in subparagraph (i) and is a member of the unitary
17 business group.

18 (iii) A unitary business group of entities described in
19 subparagraph (i) or (ii), or both.

20 (L) ~~(G)~~—"Gross business" means the sum of the following less
21 transactions between those entities included in a unitary business
22 group:

23 (i) Fees, commissions, or other compensation for financial
24 services.

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

27 (iii) Net gains, not less than zero, from trading in stocks,

1 bonds, or other securities.

2 (iv) Interest charged to customers for carrying debit balances
3 of margin accounts.

4 (v) Interest and dividends received.

5 (vi) Any other gross proceeds resulting from the operation as a
6 financial institution.

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

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

26 (O) ~~(j)~~ "Merchant discount" means the fee or negotiated
27 discount charged to a merchant by the financial institution for the

1 privilege of participating in a program whereby a credit card is
2 accepted in payment for merchandise or services sold to the credit
3 card holder.

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

7 (Q) **"NET CAPITAL" MEANS EQUITY CAPITAL SUBJECT TO THE**
8 **ADJUSTMENTS CONTAINED WITHIN THIS CHAPTER.**

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

15 (S) ~~(m)~~—"Principal base of operations", with respect to
16 transportation property, means the place of more or less permanent
17 nature from which said property is regularly directed or
18 controlled. With respect to an employee, the principal base of
19 operations means the place of more or less permanent nature from
20 which the employee regularly does any of the following:

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

23 (ii) Communicates with his or her customers or other persons.

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

26 (T) ~~(n)~~—"Real property owned" and "tangible personal property
27 owned" mean real and tangible personal property respectively on

1 which the financial institution may claim depreciation for federal
2 income tax purposes or to which the financial institution holds
3 legal title and on which no other person may claim depreciation for
4 federal income tax purposes or could claim depreciation if subject
5 to federal income tax. Real and tangible personal properties do not
6 include coin, currency, or property acquired in lieu of or pursuant
7 to a foreclosure.

8 (U) ~~(e)~~—"Regular place of business" means an office at which
9 the financial institution carries on its business in a regular and
10 systematic manner and which is continuously maintained, occupied,
11 and used by employees of the financial institution. The financial
12 institution shall have the burden of proving that an investment
13 asset or activity or trading asset or activity was properly
14 assigned to a regular place of business outside of this state by
15 demonstrating that the day-to-day decisions regarding the asset or
16 activity occurred at a regular place of business outside this
17 state. Where the day-to-day decisions regarding an investment asset
18 or activity or trading asset or activity occur at more than 1
19 regular place of business and 1 such regular place of business is
20 in this state and 1 such regular place of business is outside this
21 state, such asset or activity shall be considered to be located at
22 the regular place of business of the financial institution where
23 the investment or trading policies or guidelines with respect to
24 the asset or activity are established. Unless the financial
25 institution demonstrates to the contrary, such policies and
26 guidelines shall be presumed to be established at the commercial
27 domicile of the financial institution.

1 (V) ~~(p)~~ "Rolling stock" means railroad freight or passenger
2 cars, locomotives, or other rail cars.

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

7 (X) "TAX YEAR" MEANS THE CALENDAR YEAR OR FISCAL YEAR FOR
8 WHICH THE TAX LEVIED UNDER CHAPTER 13 IS REQUIRED TO BE PAID.

9 (Y) "TOP-TIERED PARENT ENTITY" MEANS THE HIGHEST LEVEL ENTITY
10 WITHIN THE UNITARY BUSINESS GROUP THAT IS REQUIRED TO FILE WITH A
11 REGULATORY AGENCY UNDER THE STANDARDS PRESCRIBED BY THE FFIEC.

12 (Z) "TOTAL EQUITY CAPITAL" MEANS THE EQUITY CAPITAL OF THE
13 TOP-TIERED PARENT ENTITY OF THE UNITARY BUSINESS GROUP. FOR A
14 FINANCIAL INSTITUTION THAT IS NOT A MEMBER OF A UNITARY BUSINESS
15 GROUP, TOTAL EQUITY CAPITAL MEANS THE EQUITY CAPITAL OF THE
16 FINANCIAL INSTITUTION.

17 (AA) ~~(r)~~ "Transportation property" means vehicles and vessels
18 capable of moving under their own power, such as aircraft, trains,
19 water vessels, and motor vehicles, as well as any equipment or
20 containers attached to such property, such as rolling stock,
21 barges, or trailers.

22 (BB) ~~(s)~~ "United States obligations" means all obligations of
23 the United States exempt from taxation under 31 USC 3124(a) or
24 exempt under the United States constitution or any federal statute,
25 including the obligations of any instrumentality or agency of the
26 United States that are exempt from state or local taxation under
27 the United States constitution or any statute of the United States.

1 Sec. 653. (1) Every financial institution with substantial
2 nexus in this state is subject to a franchise tax. The franchise
3 tax is imposed upon the tax base of the financial institution as
4 determined under section 655 after allocation or apportionment to
5 this state, at the rate of 0.29%.

6 (2) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBSECTION, THE
7 TAX IMPOSED BY THIS SECTION SHALL NOT BE LESS THAN ZERO. A
8 FINANCIAL INSTITUTION THAT HAS BEEN APPROVED TO RECEIVE, HAS
9 RECEIVED, OR HAS BEEN ASSIGNED A CERTIFICATED CREDIT THAT HAS NOT
10 BEEN FULLY CLAIMED OR PAID UNDER SECTION 431, 435, OR 437 OF THE
11 MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1431, 208.1435, AND
12 208.1437, THAT MAY BE CLAIMED IN A TAX YEAR ENDING AFTER DECEMBER
13 21, 2011, MAY CLAIM THAT CERTIFICATED CREDIT AGAINST THE TAX
14 IMPOSED UNDER THIS CHAPTER. IF THE AMOUNT OF THE CERTIFICATED
15 CREDITS ALLOWED TO BE CLAIMED EXCEEDS THE TAX LIABILITY OF THE
16 FINANCIAL INSTITUTION UNDER THIS CHAPTER FOR THE TAX YEAR, THAT
17 PORTION OF THE CERTIFICATED CREDIT THAT EXCEEDS THE TAX LIABILITY
18 OF THE FINANCIAL INSTITUTION SHALL BE REFUNDED. IF THE FINANCIAL
19 INSTITUTION IS A MEMBER OF A UNITARY BUSINESS GROUP, THE UNITARY
20 BUSINESS GROUP, AND NOT THE MEMBER, SHALL CLAIM THAT CERTIFICATED
21 CREDIT.

22 (3) ~~(2)~~—For purposes of this section, a financial institution
23 has substantial nexus in this state if the financial institution
24 satisfies any of the following:

25 (a) Has a physical presence in this state for a period of more
26 than 1 day during the tax year.

27 (b) Actively solicits sales in this state and has gross

1 receipts of \$350,000.00 or more sourced to this state. As used in
2 this subdivision, "actively solicits" means that term as defined
3 under section 621.

4 (c) Has an ownership interest or a beneficial interest in a
5 flow-through entity, directly or indirectly through 1 or more other
6 flow-through entities, that has substantial nexus in this state as
7 provided under this section or section 621.

8 (4) ~~(3)~~—The tax under this chapter is in lieu of the tax
9 levied and imposed under chapter 11 of this part.

10 Sec. 655. (1) ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**
11 **CHAPTER, FOR** a financial institution, tax base means the financial
12 institution's net capital . ~~Net capital means equity capital as~~
13 ~~computed in accordance with generally accepted accounting~~
14 ~~principles less the average daily book value of United States~~
15 ~~obligations and Michigan obligations. If the financial institution~~
16 ~~does not maintain its books and records in accordance with~~
17 ~~generally accepted accounting principles, net capital shall be~~
18 ~~computed in accordance with the books and records used by the~~
19 ~~financial institution, so long as the method fairly reflects the~~
20 ~~financial institution's net capital for purposes of the tax levied~~
21 ~~by this chapter. Net capital does not include up to 125% of the~~
22 ~~minimum regulatory capitalization requirements of a person subject~~
23 ~~to the tax imposed under chapter 12.~~ **SUBJECT TO THE FOLLOWING**
24 **ADJUSTMENTS BEFORE ALLOCATION OR APPORTIONMENT:**

25 (A) **DEDUCT THE AVERAGE DAILY BOOK VALUE OF UNITED STATES**
26 **OBLIGATIONS.**

27 (B) **DEDUCT THE AVERAGE DAILY BOOK VALUE OF MICHIGAN**

1 OBLIGATIONS.

2 (C) DEDUCT, SUBJECT TO THE LIMITATION PROVIDED IN THIS
3 SUBDIVISION, THE EQUITY CAPITAL OF A MEMBER OF THE UNITARY BUSINESS
4 GROUP THAT IS SUBJECT TO THE TAX IMPOSED UNDER CHAPTER 12, NOT TO
5 EXCEED 125% OF THE MINIMUM REGULATORY CAPITALIZATION REQUIREMENTS
6 OF THE MEMBER.

7 (D) DEDUCT, SUBJECT TO THE LIMITATION PROVIDED IN THIS
8 SUBDIVISION, THE EQUITY CAPITAL OF AN APPLICABLE CONTROLLED FOREIGN
9 CORPORATION, NOT TO EXCEED 125% OF THE CONTROLLED FOREIGN
10 CORPORATION'S MINIMUM REGULATORY CAPITALIZATION COMPUTED IN
11 ACCORDANCE WITH BASEL III WELL-CAPITALIZED RATES PROMULGATED BY THE
12 BASEL COMMITTEE ON BANKING SUPERVISION. FOR PURPOSES OF THIS
13 SUBDIVISION, "BASEL III WELL-CAPITALIZED RATES" MEANS THOSE
14 CAPITALIZED RATES ESTABLISHED BY THE BASEL COMMITTEE ON BANKING
15 SUPERVISION BASED ON THE INTERNATIONAL CONVERGENCE OF CAPITAL
16 MEASUREMENT AND CAPITAL STANDARDS DOCUMENT TO IMPROVE RISK
17 MANAGEMENT BY UTILIZING TOTAL RISK-BASED CAPITAL MEASURE, COMMON
18 EQUITY TIER 1 CAPITAL MEASURE, OR LEVERAGE MEASURE.

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

1 shall be treated as a full year.

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

6 (3) ~~(4)~~ For purposes of this section, each of the following
7 applies:

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

12 (b) The combination of 2 or more financial institutions into 1
13 shall be treated as if the constituent financial institutions had
14 been a single financial institution in existence for the entire tax
15 year in which the combination occurred and each tax year after the
16 combination, and the book values and ~~deductions~~ **ADJUSTMENTS** for
17 United States obligations and Michigan obligations of the
18 constituent institutions shall be combined. A combination shall
19 include any acquisition required to be accounted for by the
20 surviving financial institution in accordance with generally
21 accepted accounting principles or a statutory merger or
22 consolidation.

23 **(C) IF A UNITED STATES PERSON INCLUDED IN A FINANCIAL**
24 **INSTITUTION UNITARY BUSINESS GROUP OR A FINANCIAL INSTITUTION**
25 **COMBINED RETURN IS SUBJECT TO TAX UNDER CHAPTER 11 OR 12, ANY**
26 **BUSINESS INCOME OR EQUITY CAPITAL ATTRIBUTABLE TO THAT PERSON SHALL**
27 **BE ELIMINATED FROM THE EQUITY CAPITAL OF THE UNITARY BUSINESS GROUP**

1 **AND ANY SALES OR GROSS BUSINESS ATTRIBUTABLE TO THAT PERSON SHALL**
2 **BE ELIMINATED FROM THE APPORTIONMENT FORMULA UNDER THIS PART.**

3 Sec. 657. (1) Except as otherwise provided under this chapter,
4 the tax base of a financial institution whose business activities
5 are confined solely to this state shall be allocated to this state.
6 The tax base of a financial institution whose business activities
7 are subject to tax both within and outside of this state shall be
8 apportioned to this state by multiplying the tax base by the gross
9 business factor.

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

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

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

22 (3) Except as otherwise provided in **THIS SUBSECTION OR**
23 subsection (4), the gross business factor is a fraction, the
24 numerator of which is the total gross business of the financial
25 institution in this state during the tax year and the denominator
26 of which is the total gross business of the financial institution
27 everywhere during the tax year. **THE DENOMINATOR SHALL NOT INCLUDE**

1 ANY GROSS BUSINESS ATTRIBUTABLE TO THE FOREIGN BUSINESS OF AN
2 APPLICABLE CONTROLLED FOREIGN CORPORATION.

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

11 (5) FOR A UNITARY BUSINESS GROUP OF FINANCIAL INSTITUTIONS,
12 THE GROSS BUSINESS FACTOR SHALL INCLUDE THE GROSS BUSINESS OF ALL
13 MEMBERS OF THE UNITARY GROUP DURING THE TAX YEAR. FOR THOSE MEMBERS
14 THAT WERE ACQUIRED OR DISPOSED OF BY THE UNITARY BUSINESS GROUP
15 DURING THE TAX YEAR, THE GROSS BUSINESS FACTOR SHALL INCLUDE THE
16 GROSS BUSINESS OF THE PART-YEAR MEMBER THAT WAS RECEIVED DURING
17 THAT PORTION OF THE TAX YEAR THAT THE UNITARY BUSINESS GROUP HAD
18 OWNERSHIP OF THE PART-YEAR MEMBER. IF SECTION 655(3)(B) APPLIES,
19 THE GROSS BUSINESS FACTOR OF THE UNITARY BUSINESS GROUP SHALL
20 INCLUDE THE GROSS BUSINESS OF THE NONSURVIVING MEMBER INCLUDED IN
21 THE SURVIVING FINANCIAL INSTITUTION'S GROSS BUSINESS DURING THE TAX
22 YEAR.