

**SUBSTITUTE FOR
SENATE BILL NO. 1154**

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending sections 703 and 711 (MCL 206.703 and 206.711), as
amended by 2016 PA 158.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 703. (1) A person who disburses pension or annuity
2 payments, except as otherwise provided under this section, shall
3 withhold a tax in an amount computed by applying the rate
4 prescribed in section 51 on the taxable part of payments from an
5 employer pension, annuity, profit-sharing, stock bonus, or other
6 deferred compensation plan as well as from an individual retirement
7 arrangement, an annuity, an endowment, or a life insurance contract
8 issued by a life insurance company. Withholding shall be calculated
9 on the taxable disbursement after deducting from the taxable
10 portion the same proportion of the total amount of personal and

1 dependency exemptions of the individual allowed under this act.
2 Withholding is not required on any part of a distribution that is
3 not expected to be includable in the recipient's gross income or
4 that is deductible from adjusted gross income under section
5 30(1)(e) or (f).

6 (2) Every employer in this state required under the provisions
7 of the internal revenue code to withhold a tax on the compensation
8 of an individual, except as otherwise provided, shall deduct and
9 withhold a tax in an amount computed by applying, except as
10 provided by subsection (14), the rate prescribed in section 51 to
11 the remainder of the compensation after deducting from compensation
12 the same proportion of the total amount of personal and dependency
13 exemptions of the individual allowed under this act that the period
14 of time covered by the compensation is of 1 year. The department
15 may prescribe withholding tables that may be used by employers to
16 compute the amount of tax required to be withheld.

17 (3) Except as otherwise provided under this section, for tax
18 years that begin before July 1, 2016, every flow-through entity in
19 this state shall withhold a tax in an amount computed by applying
20 the rate prescribed in section 51 to the distributive share of
21 taxable income reasonably expected to accrue after allocation and
22 apportionment under chapter 3 of each nonresident member who is an
23 individual after deducting from that distributive income the same
24 proportion of the total amount of personal and dependency
25 exemptions of the individual allowed under this act. All of the
26 taxes withheld under this section shall accrue to the state on
27 April 15, July 15, and October 15 of the flow-through entity's tax

1 year and January 15 of the following year, except a flow-through
2 entity that is not on a calendar year basis shall substitute the
3 appropriate due dates in the flow-through entity's fiscal year that
4 correspond to those in a calendar year. Withholding for each period
5 shall be equal to 1/4 of the total withholding calculated on the
6 distributive share that is reasonably expected to accrue during the
7 tax year of the flow-through entity.

8 (4) Except as otherwise provided under this section, for tax
9 years that begin before July 1, 2016, every flow-through entity
10 with business activity in this state that has more than \$200,000.00
11 of business income reasonably expected to accrue in the tax year
12 after allocation or apportionment shall withhold a tax in an amount
13 computed by applying the rate prescribed in section 623 to the
14 distributive share of the business income of each member that is a
15 corporation or that is a flow-through entity. For purposes of
16 calculating the \$200,000.00 withholding threshold, the business
17 income of a flow-through entity shall be apportioned to this state
18 by multiplying the business income by the sales factor of the flow-
19 through entity. The sales factor of the flow-through entity is a
20 fraction, the numerator of which is the total sales of the flow-
21 through entity in this state during the tax year and the
22 denominator of which is the total sales of the flow-through entity
23 everywhere during the tax year. As used in this subsection,
24 "business income" means that term as defined in section 603(2). For
25 a partnership or S corporation, business income includes payments
26 and items of income and expense that are attributable to business
27 activity of the partnership or S corporation and separately

1 reported to the members. As used in this subsection, "sales" means
2 that term as defined in section 609 and sales in this state is
3 determined as provided in sections 665 and 669. All of the taxes
4 withheld under this section shall accrue to the state on April 15,
5 July 15, and October 15 of the flow-through entity's tax year and
6 January 15 of the following year, except a flow-through entity that
7 is not on a calendar year basis shall substitute the appropriate
8 due dates in the flow-through entity's fiscal year that correspond
9 to those in a calendar year. Withholding for each period shall be
10 equal to 1/4 of the total withholding calculated on the
11 distributive share of business income that is reasonably expected
12 to accrue during the tax year of the flow-through entity.

13 (5) For tax years that begin before July 1, 2016, if a flow-
14 through entity is subject to the withholding requirements of
15 subsection (4), then a member of that flow-through entity that is
16 itself a flow-through entity shall withhold a tax on the
17 distributive share of business income as described in subsection
18 (4) of each of its members. The department shall apply tax withheld
19 by a flow-through entity on the distributive share of business
20 income of a member flow-through entity to the withholding required
21 of that member flow-through entity. All of the taxes withheld under
22 this section shall accrue to the state on April 15, July 15, and
23 October 15 of the flow-through entity's tax year and January 15 of
24 the following year, except a flow-through entity that is not on a
25 calendar year basis shall substitute the appropriate due dates in
26 the flow-through entity's fiscal year that correspond to those in a
27 calendar year. Withholding for each period shall be equal to 1/4 of

1 the total withholding calculated on the distributive share of
2 business income that is reasonably expected to accrue during the
3 tax year of the flow-through entity.

4 (6) Every casino licensee shall withhold a tax in an amount
5 computed by applying the rate prescribed in section 51 to the
6 winnings of a nonresident reportable by the casino licensee under
7 the internal revenue code.

8 (7) Every race meeting licensee or track licensee shall
9 withhold a tax in an amount computed by applying the rate
10 prescribed in section 51 to a payoff price on a winning ticket of a
11 nonresident reportable by the race meeting licensee or track
12 licensee under the internal revenue code that is the result of
13 pari-mutuel wagering at a licensed race meeting.

14 (8) Every casino licensee or race meeting licensee or track
15 licensee shall report winnings of a resident reportable by the
16 casino licensee or race meeting licensee or track licensee under
17 the internal revenue code to the department in the same manner and
18 format as required under the internal revenue code.

19 (9) Every eligible production company shall, to the extent not
20 withheld by a professional services corporation or professional
21 employer organization, deduct and withhold a tax in an amount
22 computed by applying the rate prescribed in section 51 to the
23 remainder of the payments made to the professional services
24 corporation or professional employer organization for the services
25 of a performing artist or crew member after deducting from those
26 payments the same proportion of the total amount of personal and
27 dependency exemptions of the individuals allowed under this act.

1 (10) Every publicly traded partnership that has equity
2 securities registered with the securities and exchange commission
3 under section 12 of title I of the securities and exchange act of
4 1934, 15 USC 78l, shall not be subject to withholding.

5 (11) Except as otherwise provided under this subsection, all
6 of the taxes withheld under this section shall accrue to the state
7 on the last day of the month in which the taxes are withheld but
8 shall be returned and paid to the department by the employer,
9 eligible production company, casino licensee, or race meeting
10 licensee or track licensee within 15 days after the end of any
11 month or as provided in section 705. For an employer that has
12 entered into an agreement with a community college pursuant to
13 chapter 13 of the community college act of 1966, 1966 PA 331, MCL
14 389.161 to 389.166, a portion of the taxes withheld under this
15 section that are attributable to each employee in a new job created
16 pursuant to the agreement shall accrue to the community college on
17 the last day of the month in which the taxes are withheld but shall
18 be returned and paid to the community college by the employer
19 within 15 days after the end of any month or as provided in section
20 705 for as long as the agreement remains in effect. For purposes of
21 this act and 1941 PA 122, MCL 205.1 to 205.31, payments made by an
22 employer to a community college under this subsection shall be
23 considered income taxes paid to this state. **FOR AN EMPLOYER THAT IS**
24 **AN AUTHORIZED BUSINESS PURSUANT TO A WRITTEN AGREEMENT ENTERED INTO**
25 **WITH THE MICHIGAN STRATEGIC FUND PURSUANT TO CHAPTER 8D OF THE**
26 **MICHIGAN STRATEGIC FUND ACT, 1984 PA 270, MCL 125.2090G TO**
27 **125.2090I, A PORTION OF THE TAXES WITHHELD UNDER THIS SECTION THAT**

1 ARE ATTRIBUTABLE TO EACH CERTIFIED NEW JOB CREATED PURSUANT TO THE
2 AGREEMENT DOES NOT ACCRUE TO THE STATE BUT SHALL BE RETAINED BY THE
3 EMPLOYER IN ACCORDANCE WITH THE TERMS OF THE WRITTEN AGREEMENT. FOR
4 PURPOSES OF THIS ACT AND 1941 PA 122, MCL 205.1 TO 205.31, THE
5 WITHHOLDINGS RETAINED BY THE EMPLOYER UNDER THIS SUBSECTION SHALL
6 BE CONSIDERED INCOME TAXES PAID TO THIS STATE.

7 (12) ~~A~~ EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBSECTION, A
8 person required by this section to deduct and withhold taxes on
9 income under this section holds the amount of tax withheld as a
10 trustee for this state and is liable for the payment of the tax to
11 this state or, if applicable, to the community college and is not
12 liable to any individual for the amount of the payment. **AN EMPLOYER**
13 **THAT IS AN AUTHORIZED BUSINESS PURSUANT TO A WRITTEN AGREEMENT**
14 **ENTERED INTO WITH THE MICHIGAN STRATEGIC FUND FOR A WITHHOLDING**
15 **ABATEMENT PURSUANT TO CHAPTER 8D OF THE MICHIGAN STRATEGIC FUND**
16 **ACT, 1984 PA 270, MCL 125.2090G TO 125.2090I, THAT IS REQUIRED BY**
17 **THIS SECTION TO DEDUCT AND WITHHOLD TAXES ON COMPENSATION DOES NOT**
18 **HOLD THAT PORTION OF THE WITHHOLDINGS TAX ATTRIBUTABLE TO THOSE**
19 **CERTIFIED NEW JOBS AS A TRUSTEE FOR THIS STATE AND IS NOT LIABLE**
20 **FOR THE PAYMENT OF THAT TAX TO THIS STATE AND IS NOT LIABLE TO ANY**
21 **INDIVIDUAL FOR THE AMOUNT OF THE PAYMENT.**

22 (13) An employer in this state is not required to deduct and
23 withhold a tax on the compensation paid to a nonresident individual
24 employee, who, under section 256, may claim a tax credit equal to
25 or in excess of the tax estimated to be due for the tax year or is
26 exempted from liability for the tax imposed by this act. In each
27 tax year, the nonresident individual shall furnish to the employer,

1 on a form approved by the department, a verified statement of
2 nonresidence.

3 (14) A person required to withhold a tax under this act, by
4 the fifteenth day of the following month, shall provide the
5 department with a copy of any exemption certificate on which a
6 person with income subject to withholding under subsection (6) or
7 (7) claims more than 9 personal or dependency exemptions, claims a
8 status that exempts the person subject to withholding under
9 subsection (6) or (7) from withholding under this section.

10 (15) A person who disburses annuity payments pursuant to the
11 terms of a qualified charitable gift annuity is not required to
12 deduct and withhold a tax on those payments as prescribed under
13 subsection (1). As used in this subsection, "qualified charitable
14 gift annuity" means an annuity described under section 501(m)(5) of
15 the internal revenue code and issued by an organization exempt
16 under section 501(c)(3) of the internal revenue code.

17 (16) Notwithstanding the requirements of subsections (4) and
18 (5), if a flow-through entity receives an exemption certificate
19 from a member other than a nonresident individual, the flow-through
20 entity shall not withhold a tax on the distributive share of the
21 business income of that member if all of the following conditions
22 are met:

23 (a) The exemption certificate is completed by the member in
24 the form and manner prescribed by the department and certifies that
25 the member will do all of the following:

26 (i) File the returns required under this act.

27 (ii) Pay or withhold the tax required under this act on the

1 distributive share of the business income received from any flow-
2 through entity in which the member has an ownership or beneficial
3 interest, directly or indirectly through 1 or more other flow-
4 through entities.

5 (iii) Submit to the taxing jurisdiction of this state for
6 purposes of collection of the tax under this act together with
7 related interest and penalties under 1941 PA 122, MCL 205.1 to
8 205.31, imposed on the member with respect to the distributive
9 share of the business income of that member.

10 (b) The department may require the member to file the
11 exemption certificate with the department and provide a copy to the
12 flow-through entity.

13 (c) The department may require a flow-through entity that
14 receives an exemption certificate to attach a copy of the exemption
15 certificate to the annual reconciliation return as required by
16 section 711. A flow-through entity that is entirely exempt from the
17 withholding requirements of subsection (4) or (5) by this
18 subsection may be required to furnish a copy of the exemption
19 certificate in another manner prescribed by the department.

20 (d) A copy of the exemption certificate shall be retained by
21 the member and flow-through entity and made available to the
22 department upon request. Any copy of the exemption certificate
23 shall be maintained in a format and for the period required by 1941
24 PA 122, MCL 205.1 to 205.31.

25 (17) The department may revoke the election provided for in
26 subsection (16) if it determines that the member or a flow-through
27 entity is not abiding by the terms of the exemption certificate or

1 the requirements of subsection (16). If the department does revoke
2 the election option under subsection (16), the department shall
3 notify the affected flow-through entity that withholding is
4 required on the member under subsection (4) or (5), beginning 60
5 days after notice of revocation is received.

6 (18) Notwithstanding the requirements of subsections (4) and
7 (5), a flow-through entity is not required to withhold in
8 accordance with this section for a member that voluntarily elects
9 to file a return and pay the tax imposed by the Michigan business
10 tax act under section 680 or section 500 of the Michigan business
11 tax act, 2007 PA 36, MCL 208.1500.

12 (19) Notwithstanding the withholding requirements of
13 subsection (3), (4), or (5), a flow-through entity is not required
14 to comply with those withholding requirements to the extent that
15 the withholding would violate any of the following:

16 (a) Housing assistance payment programs distribution
17 restrictions under 24 CFR part 880, 881, 883, or 891.

18 (b) Rural housing service return on investment restrictions
19 under 7 CFR 3560.68 or 3560.305.

20 (c) Articles of incorporation or other document of
21 organization adopted pursuant to section 83 or 93 of the state
22 housing development authority act of 1966, 1966 PA 346, MCL
23 125.1483 and 125.1493.

24 Sec. 711. (1) Every person required by this part to deduct and
25 withhold taxes for a tax year on income other than distributive
26 share of income from a flow-through entity shall furnish to the
27 person who received the income a statement in duplicate on or

1 before January 31 of the succeeding year of the total income paid
2 during the tax year and the amount deducted or withheld. However,
3 if employment is terminated before the close of a calendar year by
4 a person that goes out of business or permanently ceases to exist,
5 then the statement required by this subsection shall be issued
6 within 30 days after the last compensation, winnings, or payoff of
7 a winning ticket is paid. A duplicate of a statement made pursuant
8 to this section and an annual reconciliation return, MI-W3, shall
9 be filed with the department by February 28 of the succeeding year
10 except that a person that goes out of business or permanently
11 ceases to exist shall file the statement and the annual
12 reconciliation return within 30 days after going out of business or
13 permanently ceasing to exist. For tax years that begin before July
14 1, 2016, a flow-through entity that was required to withhold taxes
15 on distributive shares of business income shall file an annual
16 reconciliation return with the department no later than the last
17 day of the second month following the end of the flow-through
18 entity's federal tax year. The department may require a flow-
19 through entity to file an annual business income information return
20 with the department on the due date, including extensions, of its
21 annual federal information return.

22 (2) Every person required by this part to deduct or withhold
23 taxes shall make a return or report in form and content and at
24 times as prescribed by the department. An employer that has entered
25 into an agreement with a community college pursuant to chapter 13
26 of the community college act of 1966, 1966 PA 331, MCL 389.161 to
27 389.166, and is required to deduct or withhold taxes from

1 compensation and make payments to a community college pursuant to
2 the agreement for a portion of those taxes withheld shall, for as
3 long as the agreement remains in effect, delineate in the return or
4 report required under this subsection between the amount deducted
5 or withheld and paid to the state and that amount paid to a
6 community college. **AN EMPLOYER THAT IS AN AUTHORIZED BUSINESS
7 PURSUANT TO A WRITTEN AGREEMENT ENTERED INTO WITH THE MICHIGAN
8 STRATEGIC FUND FOR A WITHHOLDING ABATEMENT PURSUANT TO CHAPTER 8D
9 OF THE MICHIGAN STRATEGIC FUND ACT, 1984 PA 270, MCL 125.2090G TO
10 125.2090I, AND IS REQUIRED TO DEDUCT AND WITHHOLD TAXES FROM
11 COMPENSATION BUT MAY RETAIN A PORTION OF THE WITHHOLDINGS TAX
12 PURSUANT TO THE WRITTEN AGREEMENT SHALL, FOR A PERIOD OF TIME AS
13 PROVIDED IN THE WRITTEN AGREEMENT, DELINEATE IN THE RETURN OR
14 REPORT REQUIRED UNDER THIS SUBSECTION BETWEEN THE AMOUNT DEDUCTED
15 OR WITHHELD AND PAID TO THE STATE AND THAT AMOUNT RETAINED BY THE
16 EMPLOYER.**

17 (3) Every person who receives income subject to withholding
18 under this part shall furnish to the person required by this part
19 to deduct and withhold taxes information required to make an
20 accurate withholding. A person who receives income subject to
21 withholding under this part shall file with the person required by
22 this part to deduct and withhold taxes revised information within
23 10 days after a decrease in the number of exemptions or a change in
24 status from a nonresident to a resident. The person who receives
25 income subject to withholding under this part may file revised
26 information when the number of exemptions increases or when a
27 change in status occurs from that of a resident of this state to a

1 nonresident of this state. Revised information shall not be given
2 retroactive effect for withholding purposes. A person required by
3 this part to deduct and withhold taxes shall rely on this
4 information for withholding purposes unless directed by the
5 department to withhold on some other basis. If a person who
6 receives income subject to withholding under this part fails or
7 refuses to furnish information, the person required by this part to
8 deduct and withhold taxes shall withhold at the full rate of tax
9 from the person's income subject to withholding under this part.

10 Enacting section 1. This amendatory act does not take effect
11 unless Senate Bill No. 1153 of the 98th Legislature is enacted into
12 law.