

# SENATE BILL No. 1154

October 20, 2016, Introduced by Senators SCHMIDT, BIEDA, STAMAS, KNEZEK, MEEKHOF and ANANICH and referred to the Committee on Economic Development and International Investment.

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

1 portion the same proportion of the total amount of personal and  
2 dependency exemptions of the individual allowed under this act.  
3 Withholding is not required on any part of a distribution that is  
4 not expected to be includable in the recipient's gross income or  
5 that is deductible from adjusted gross income under section  
6 30(1)(e) or (f).

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

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

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

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

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

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

1 calendar year. Withholding for each period shall be equal to 1/4 of  
2 the total withholding calculated on the distributive share of  
3 business income that is reasonably expected to accrue during the  
4 tax year of the flow-through entity.

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

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

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

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

1 dependency exemptions of the individuals allowed under this act.

2 (10) Every publicly traded partnership that has equity  
3 securities registered with the securities and exchange commission  
4 under section 12 of title I of the securities and exchange act of  
5 1934, 15 USC 78l, shall not be subject to withholding.

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

1 125.2090I, A PORTION OF THE TAXES WITHHELD UNDER THIS SECTION THAT  
2 ARE ATTRIBUTABLE TO EACH QUALIFIED NEW JOB CREATED PURSUANT TO THE  
3 AGREEMENT DOES NOT ACCRUE TO THE STATE BUT SHALL BE RETAINED BY THE  
4 EMPLOYER IN ACCORDANCE WITH THE TERMS OF THE WRITTEN AGREEMENT. FOR  
5 PURPOSES OF THIS ACT AND 1941 PA 122, MCL 205.1 TO 205.31, THE  
6 WITHHOLDINGS RETAINED BY THE EMPLOYER UNDER THIS SUBSECTION SHALL  
7 BE CONSIDERED INCOME TAXES PAID TO THIS STATE.

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

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

1 tax year, the nonresident individual shall furnish to the employer,  
2 on a form approved by the department, a verified statement of  
3 nonresidence.

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

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

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

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

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



1           (ii) Pay or withhold the tax required under this act on the  
2 distributive share of the business income received from any flow-  
3 through entity in which the member has an ownership or beneficial  
4 interest, directly or indirectly through 1 or more other flow-  
5 through entities.

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

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

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

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

26           (17) The department may revoke the election provided for in  
27 subsection (16) if it determines that the member or a flow-through

1 entity is not abiding by the terms of the exemption certificate or  
2 the requirements of subsection (16). If the department does revoke  
3 the election option under subsection (16), the department shall  
4 notify the affected flow-through entity that withholding is  
5 required on the member under subsection (4) or (5), beginning 60  
6 days after notice of revocation is received.

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

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

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

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

21 (c) Articles of incorporation or other document of  
22 organization adopted pursuant to section 83 or 93 of the state  
23 housing development authority act of 1966, 1966 PA 346, MCL  
24 125.1483 and 125.1493.

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

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

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

1 389.166, and is required to deduct or withhold taxes from  
2 compensation and make payments to a community college pursuant to  
3 the agreement for a portion of those taxes withheld shall, for as  
4 long as the agreement remains in effect, delineate in the return or  
5 report required under this subsection between the amount deducted  
6 or withheld and paid to the state and that amount paid to a  
7 community college. **AN EMPLOYER THAT IS AN AUTHORIZED BUSINESS  
8 PURSUANT TO A WRITTEN AGREEMENT ENTERED INTO WITH THE MICHIGAN  
9 STRATEGIC FUND FOR A WITHHOLDING ABATEMENT PURSUANT TO CHAPTER 8D  
10 OF THE MICHIGAN STRATEGIC FUND ACT, 1984 PA 270, MCL 125.2090G TO  
11 125.2090I, AND IS REQUIRED TO DEDUCT AND WITHHOLD TAXES FROM  
12 COMPENSATION BUT MAY RETAIN A PORTION OF THE WITHHOLDINGS TAX  
13 PURSUANT TO THE WRITTEN AGREEMENT SHALL, FOR A PERIOD OF TIME AS  
14 PROVIDED IN THE WRITTEN AGREEMENT, DELINEATE IN THE RETURN OR  
15 REPORT REQUIRED UNDER THIS SUBSECTION BETWEEN THE AMOUNT DEDUCTED  
16 OR WITHHELD AND PAID TO THE STATE AND THAT AMOUNT RETAINED BY THE  
17 EMPLOYER.**

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

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

11 Enacting section 1. This amendatory act does not take effect  
12 unless Senate Bill No. 1153

13 of the 98th Legislature is enacted into law.