

HOUSE BILL No. 6545

November 28, 2018, Introduced by Rep. Tedder and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending sections 607 and 623 (MCL 206.607 and 206.623), section
607 as amended by 2018 PA 38 and section 623 as amended by 2014 PA
13.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 607. (1) "Federal taxable income" means taxable income as
2 defined in section 63 of the internal revenue code, except that
3 federal taxable income shall be calculated as if ~~section~~**SECTIONS**
4 **163(J)**, 168(k), and section 199 of the internal revenue code were
5 not in effect.

6 (2) "Flow-through entity" means an entity that for the
7 applicable tax year is treated as a subchapter S corporation under
8 section 1362(a) of the internal revenue code, a general

1 partnership, a trust, a limited partnership, a limited liability
2 partnership, or a limited liability company, that for the tax year
3 is not taxed as a corporation for federal income tax purposes.
4 Flow-through entity does not include any entity disregarded under
5 section 699.

6 (3) "Foreign operating entity" means a United States
7 corporation that satisfies each of the following:

8 (a) Would otherwise be a part of a unitary business group that
9 has at least 1 corporation included in the unitary business group
10 that is taxable in this state.

11 (b) Has substantial operations outside the United States, the
12 District of Columbia, any territory or possession of the United
13 States except for the Commonwealth of Puerto Rico, or a political
14 subdivision of any of the foregoing.

15 (c) At least 80% of its income is active foreign business
16 income as defined in section ~~861(e)(1)(B)~~ **871(l)(1)(B)** of the
17 internal revenue code.

18 (4) "Gross receipts" means the entire amount received by the
19 taxpayer from any activity whether in intrastate, interstate, or
20 foreign commerce carried on for direct or indirect gain, benefit,
21 or advantage to the taxpayer or to others except for the following:

22 (a) Proceeds from sales by a principal that the taxpayer
23 collects in an agency capacity solely on behalf of the principal
24 and delivers to the principal.

25 (b) Amounts received by the taxpayer as an agent solely on
26 behalf of the principal that are expended by the taxpayer for any
27 of the following:

1 (i) The performance of a service by a third party for the
2 benefit of the principal that is required by law to be performed by
3 a licensed person.

4 (ii) The performance of a service by a third party for the
5 benefit of the principal that the taxpayer has not undertaken a
6 contractual duty to perform.

7 (iii) Principal and interest under a mortgage loan or land
8 contract, lease or rental payments, or taxes, utilities, or
9 insurance premiums relating to real or personal property owned or
10 leased by the principal.

11 (iv) A capital asset of a type that is, or under the internal
12 revenue code will become, eligible for depreciation, amortization,
13 or accelerated cost recovery by the principal for federal income
14 tax purposes, or for real property owned or leased by the
15 principal.

16 (v) Property not described under subparagraph (iv) purchased
17 by the taxpayer on behalf of the principal and that the taxpayer
18 does not take title to or use in the course of performing its
19 contractual business activities.

20 (vi) Fees, taxes, assessments, levies, fines, penalties, or
21 other payments established by law that are paid to a governmental
22 entity and that are the legal obligation of the principal.

23 (c) Amounts that are excluded from gross income of a foreign
24 corporation engaged in the international operation of aircraft
25 under section 883(a) of the internal revenue code.

26 (d) Amounts received by an advertising agency used to acquire
27 advertising media time, space, production, or talent on behalf of

1 another person.

2 (e) Notwithstanding any other provision of this section,
3 amounts received by a taxpayer that manages real property owned by
4 the taxpayer's client that are deposited into a separate account
5 kept in the name of the taxpayer's client and that are not
6 reimbursements to the taxpayer and are not indirect payments for
7 management services that the taxpayer provides to that client.

8 (f) Proceeds from the taxpayer's transfer of an account
9 receivable if the sale that generated the account receivable was
10 included in gross receipts for federal income tax purposes. This
11 subdivision does not apply to a taxpayer that during the tax year
12 both buys and sells any receivables.

13 (g) Proceeds from any of the following:

14 (i) The original issue of stock or equity instruments.

15 (ii) The original issue of debt instruments.

16 (h) Refunds from returned merchandise.

17 (i) Cash and in-kind discounts.

18 (j) Trade discounts.

19 (k) Federal, state, or local tax refunds.

20 (l) Security deposits.

21 (m) Payment of the principal portion of loans.

22 (n) Value of property received in a like-kind exchange.

23 (o) Proceeds from a sale, transaction, exchange, involuntary
24 conversion, or other disposition of tangible, intangible, or real
25 property that is a capital asset as defined in section 1221(a) of
26 the internal revenue code or land that qualifies as property used
27 in the trade or business as defined in section 1231(b) of the

1 internal revenue code, less any gain from the disposition to the
2 extent that gain is included in federal taxable income.

3 (p) The proceeds from a policy of insurance, a settlement of a
4 claim, or a judgment in a civil action less any proceeds under this
5 subdivision that are included in federal taxable income.

6 (5) "Insurance company" means an authorized insurer as defined
7 in section 108 of the insurance code of 1956, 1956 PA 218, MCL
8 500.108. Insurance company does not include a health maintenance
9 organization authorized under chapter 35 of the insurance code of
10 1956, 1956 PA 218, MCL 500.3501 to 500.3573.

11 (6) "Internal revenue code" means the United States internal
12 revenue code of 1986 in effect on January 1, 2018 or, at the option
13 of the taxpayer, in effect for the tax year.

14 (7) "Member", when used in reference to a flow-through entity,
15 means a shareholder of a subchapter S corporation, a partner in a
16 general partnership, a limited partnership, or a limited liability
17 partnership, a member of a limited liability company, or a
18 beneficiary of a trust that is a flow-through entity.

19 Sec. 623. (1) Except as otherwise provided in this part, there
20 is levied and imposed a corporate income tax on every taxpayer with
21 business activity within this state or ownership interest or
22 beneficial interest in a flow-through entity that has business
23 activity in this state unless prohibited by 15 USC 381 to 384. The
24 corporate income tax is imposed on the corporate income tax base,
25 after allocation or apportionment to this state, at the rate of
26 6.0%.

27 (2) The corporate income tax base means a taxpayer's business

1 income subject to the following adjustments, before allocation or
2 apportionment, and the adjustment in subsection (4) after
3 allocation or apportionment:

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

10 (b) Add all taxes on or measured by net income including the
11 tax imposed under this part to the extent that the taxes were
12 deducted in arriving at federal taxable income.

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

15 (d) To the extent included in federal taxable income, deduct
16 dividends and royalties received from persons other than United
17 States persons and foreign operating entities, including, but not
18 limited to, amounts determined under section 78 of the internal
19 revenue code or sections 951 to ~~964~~**965** of the internal revenue
20 code.

21 (e) Except as otherwise provided under this subdivision, to
22 the extent deducted in arriving at federal taxable income, add any
23 royalty, interest, or other expense paid to a person related to the
24 taxpayer by ownership or control for the use of an intangible asset
25 if the person is not included in the taxpayer's unitary business
26 group. The addition of any royalty, interest, or other expense
27 described under this subdivision is not required to be added if the

1 taxpayer can demonstrate that the transaction has a nontax business
2 purpose, is conducted with arm's-length pricing and rates and terms
3 as applied in accordance with sections 482 and 1274(d) of the
4 internal revenue code, and 1 of the following is true:

5 (i) The transaction is a pass through of another transaction
6 between a third party and the related person with comparable rates
7 and terms.

8 (ii) An addition would result in double taxation. For purposes
9 of this subparagraph, double taxation exists if the transaction is
10 subject to tax in another jurisdiction.

11 (iii) An addition would be unreasonable as determined by the
12 state treasurer.

13 (iv) The related person recipient of the transaction is
14 organized under the laws of a foreign nation which has in force a
15 comprehensive income tax treaty with the United States.

16 (f) To the extent included in federal taxable income, deduct
17 interest income derived from United States obligations.

18 (g) For tax years beginning after December 31, 2011, eliminate
19 all of the following:

20 (i) Income from producing oil and gas to the extent included
21 in federal taxable income.

22 (ii) Expenses of producing oil and gas to the extent deducted
23 in arriving at federal taxable income.

24 (h) For tax years beginning after December 31, 2012, for a
25 qualified taxpayer, eliminate all of the following:

26 (i) Income derived from a mineral to the extent included in
27 federal taxable income.

1 (ii) Expenses related to the income deductible under
2 subparagraph (i) to the extent deducted in arriving at federal
3 taxable income.

4 (3) For purposes of subsection (2), the business income of a
5 unitary business group is the sum of the business income of each
6 person included in the unitary business group less any items of
7 income and related deductions arising from transactions including
8 dividends between persons included in the unitary business group.

9 (4) Deduct any available business loss incurred after December
10 31, 2011. As used in this subsection, "business loss" means a
11 negative business income taxable amount after allocation or
12 apportionment. For purposes of this subsection, a taxpayer that
13 acquires the assets of another corporation in a transaction
14 described under section 381(a)(1) or (2) of the internal revenue
15 code may deduct any business loss attributable to that distributor
16 or transferor corporation. The business loss shall be carried
17 forward to the year immediately succeeding the loss year as an
18 offset to the allocated or apportioned corporate income tax base,
19 then successively to the next 9 taxable years following the loss
20 year or until the loss is used up, whichever occurs first.

21 (5) As used in this section, "oil and gas" means oil and gas
22 that is subject to severance tax under 1929 PA 48, MCL 205.301 to
23 205.317.

24 Enacting section 1. This amendatory act is retroactive and
25 effective January 1, 2018 and applies to all business activity
26 occurring after December 31, 2017.