

HOUSE BILL NO. 5741

April 28, 2020, Introduced by Rep. Yancey and referred to the Committee on Tax Policy.

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), section
703 as amended by 2016 PA 158 and section 711 as amended by 2018 PA
118, and by adding sections 272a and 672.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 272a. (1) Except as otherwise provided under this
2 section, a taxpayer with 50 employees or less may claim a credit
3 against the tax imposed by this part in an amount equal to 24% of
4 the credit the taxpayer is allowed to claim as a credit under



1 section 2301 of the coronavirus aid, relief, and economic security
2 act (CARES Act), Public Law 116-136, for a tax year on a return
3 filed under this part for the same tax year. The credit amount
4 allowed under this section must be reduced by an amount equal to
5 any loan or grant received by the taxpayer during the same tax year
6 under the Michigan small business relief program created by the
7 Michigan strategic fund pursuant to the resolution approved by the
8 Michigan strategic fund board on March 19, 2020.

9 (2) If the credit allowed by this section exceeds the tax
10 liability of the taxpayer for the tax year, that portion of the
11 credit that exceeds the tax liability of the taxpayer for the tax
12 year shall not be refunded.

13 (3) A taxpayer who is eligible to claim a credit under this
14 section may claim an advance payment of the credit by retaining a
15 portion of the taxes required to be withheld pursuant to part 3.

16 Sec. 672. (1) Except as otherwise provided under this section,
17 a taxpayer with 50 employees or less may claim a credit against the
18 tax imposed by this part in an amount equal to 24% of the credit
19 the taxpayer is allowed to claim as a credit under section 2301 of
20 the coronavirus aid, relief, and economic security act (CARES Act),
21 Public Law 116-136, for a tax year on a return filed under this
22 part for the same tax year. The credit amount allowed under this
23 section must be reduced by an amount equal to any loan or grant
24 received by the taxpayer during the same tax year under the
25 Michigan small business relief program created by the Michigan
26 strategic fund pursuant to the resolution approved by the Michigan
27 strategic fund board on March 19, 2020.

28 (2) If the credit allowed by this section exceeds the tax
29 liability of the taxpayer for the tax year, that portion of the



1 credit that exceeds the tax liability of the taxpayer for the tax
2 year shall not be refunded.

3 (3) A taxpayer who is eligible to claim a credit under this
4 section may claim an advance payment of the credit by retaining a
5 portion of the taxes required to be withheld pursuant to part 3.

6 Sec. 703. (1) A person who disburses pension or annuity
7 payments, except as otherwise provided under this section, shall
8 withhold a tax in an amount computed by applying the rate
9 prescribed in section 51 on the taxable part of payments from an
10 employer pension, annuity, profit-sharing, stock bonus, or other
11 deferred compensation plan as well as from an individual retirement
12 arrangement, an annuity, an endowment, or a life insurance contract
13 issued by a life insurance company. Withholding shall be calculated
14 on the taxable disbursement after deducting from the taxable
15 portion the same proportion of the total amount of personal and
16 dependency exemptions of the individual allowed under this act.
17 Withholding is not required on any part of a distribution that is
18 not expected to be includable in the recipient's gross income or
19 that is deductible from adjusted gross income under section
20 30(1)(e) or (f).

21 (2) Every employer in this state required under the provisions
22 of the internal revenue code to withhold a tax on the compensation
23 of an individual, except as otherwise provided, shall deduct and
24 withhold a tax in an amount computed by applying, except as
25 provided by subsection (14), the rate prescribed in section 51 to
26 the remainder of the compensation after deducting from compensation
27 the same proportion of the total amount of personal and dependency
28 exemptions of the individual allowed under this act that the period
29 of time covered by the compensation is of 1 year. The department



1 may prescribe withholding tables that may be used by employers to
2 compute the amount of tax required to be withheld.

3 (3) Except as otherwise provided under this section, for tax
4 years that begin before July 1, 2016, every flow-through entity in
5 this state shall withhold a tax in an amount computed by applying
6 the rate prescribed in section 51 to the distributive share of
7 taxable income reasonably expected to accrue after allocation and
8 apportionment under chapter 3 of each nonresident member who is an
9 individual after deducting from that distributive income the same
10 proportion of the total amount of personal and dependency
11 exemptions of the individual allowed under this act. All of the
12 taxes withheld under this section shall accrue to the state on
13 April 15, July 15, and October 15 of the flow-through entity's tax
14 year and January 15 of the following year, except a flow-through
15 entity that is not on a calendar year basis shall substitute the
16 appropriate due dates in the flow-through entity's fiscal year that
17 correspond to those in a calendar year. Withholding for each period
18 shall be equal to 1/4 of the total withholding calculated on the
19 distributive share that is reasonably expected to accrue during the
20 tax year of the flow-through entity.

21 (4) Except as otherwise provided under this section, for tax
22 years that begin before July 1, 2016, every flow-through entity
23 with business activity in this state that has more than \$200,000.00
24 of business income reasonably expected to accrue in the tax year
25 after allocation or apportionment shall withhold a tax in an amount
26 computed by applying the rate prescribed in section 623 to the
27 distributive share of the business income of each member that is a
28 corporation or that is a flow-through entity. For purposes of
29 calculating the \$200,000.00 withholding threshold, the business



1 income of a flow-through entity shall be apportioned to this state
2 by multiplying the business income by the sales factor of the flow-
3 through entity. The sales factor of the flow-through entity is a
4 fraction, the numerator of which is the total sales of the flow-
5 through entity in this state during the tax year and the
6 denominator of which is the total sales of the flow-through entity
7 everywhere during the tax year. As used in this subsection,
8 "business income" means that term as defined in section 603(2). For
9 a partnership or S corporation, business income includes payments
10 and items of income and expense that are attributable to business
11 activity of the partnership or S corporation and separately
12 reported to the members. As used in this subsection, "sales" means
13 that term as defined in section 609 and sales in this state is
14 determined as provided in sections 665 and 669. All of the taxes
15 withheld under this section shall accrue to the state on April 15,
16 July 15, and October 15 of the flow-through entity's tax year and
17 January 15 of the following year, except a flow-through entity that
18 is not on a calendar year basis shall substitute the appropriate
19 due dates in the flow-through entity's fiscal year that correspond
20 to those in a calendar year. Withholding for each period shall be
21 equal to 1/4 of the total withholding calculated on the
22 distributive share of business income that is reasonably expected
23 to accrue during the tax year of the flow-through entity.

24 (5) For tax years that begin before July 1, 2016, if a flow-
25 through entity is subject to the withholding requirements of
26 subsection (4), then a member of that flow-through entity that is
27 itself a flow-through entity shall withhold a tax on the
28 distributive share of business income as described in subsection
29 (4) of each of its members. The department shall apply tax withheld



1 by a flow-through entity on the distributive share of business
2 income of a member flow-through entity to the withholding required
3 of that member flow-through entity. All of the taxes withheld under
4 this section shall accrue to the state on April 15, July 15, and
5 October 15 of the flow-through entity's tax year and January 15 of
6 the following year, except a flow-through entity that is not on a
7 calendar year basis shall substitute the appropriate due dates in
8 the flow-through entity's fiscal year that correspond to those in a
9 calendar year. Withholding for each period shall be equal to 1/4 of
10 the total withholding calculated on the distributive share of
11 business income that is reasonably expected to accrue during the
12 tax year of the flow-through entity.

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

17 (7) Every race meeting licensee or track licensee shall
18 withhold a tax in an amount computed by applying the rate
19 prescribed in section 51 to a payoff price on a winning ticket of a
20 nonresident reportable by the race meeting licensee or track
21 licensee under the internal revenue code that is the result of
22 pari-mutuel wagering at a licensed race meeting.

23 (8) Every casino licensee or race meeting licensee or track
24 licensee shall report winnings of a resident reportable by the
25 casino licensee or race meeting licensee or track licensee under
26 the internal revenue code to the department in the same manner and
27 format as required under the internal revenue code.

28 (9) Every eligible production company shall, to the extent not
29 withheld by a professional services corporation or professional



1 employer organization, deduct and withhold a tax in an amount
2 computed by applying the rate prescribed in section 51 to the
3 remainder of the payments made to the professional services
4 corporation or professional employer organization for the services
5 of a performing artist or crew member after deducting from those
6 payments the same proportion of the total amount of personal and
7 dependency exemptions of the individuals allowed under this act.

8 (10) Every publicly traded partnership that has equity
9 securities registered with the securities and exchange commission
10 under section 12 of title I of the securities and exchange act of
11 1934, 15 USC 78l, shall not be subject to withholding.

12 (11) Except as otherwise provided under this subsection, all
13 of the taxes withheld under this section shall accrue to the state
14 on the last day of the month in which the taxes are withheld but
15 shall be returned and paid to the department by the employer,
16 eligible production company, casino licensee, or race meeting
17 licensee or track licensee within 15 days after the end of any
18 month or as provided in section 705. For an employer that has
19 entered into an agreement with a community college pursuant to
20 chapter 13 of the community college act of 1966, 1966 PA 331, MCL
21 389.161 to 389.166, a portion of the taxes withheld under this
22 section that are attributable to each employee in a new job created
23 pursuant to the agreement shall accrue to the community college on
24 the last day of the month in which the taxes are withheld but shall
25 be returned and paid to the community college by the employer
26 within 15 days after the end of any month or as provided in section
27 705 for as long as the agreement remains in effect. **An employer**
28 **that is eligible for a credit under section 272a or 672 may, in a**
29 **form and manner prescribed by the department, retain a portion of**



1 the taxes withheld under this section as an advance payment for a
2 credit claimed under section 272a or 672. For purposes of this act
3 and 1941 PA 122, MCL 205.1 to 205.31, payments made by an employer
4 to a community college, and withholdings retained by an employer as
5 an advance payment of the credit under section 272a or 672, under
6 this subsection shall be considered income taxes paid to this
7 state.

8 (12) A person required by this section to deduct and withhold
9 taxes on income under this section holds the amount of tax withheld
10 as a trustee for this state and is liable for the payment of the
11 tax to this state or, if applicable, to the community college and
12 is not liable to any individual for the amount of the payment.

13 (13) An employer in this state is not required to deduct and
14 withhold a tax on the compensation paid to a nonresident individual
15 employee, who, under section 256, may claim a tax credit equal to
16 or in excess of the tax estimated to be due for the tax year or is
17 exempted from liability for the tax imposed by this act. In each
18 tax year, the nonresident individual shall furnish to the employer,
19 on a form approved by the department, a verified statement of
20 nonresidence.

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

28 (15) A person who disburses annuity payments pursuant to the
29 terms of a qualified charitable gift annuity is not required to



1 deduct and withhold a tax on those payments as prescribed under
2 subsection (1). As used in this subsection, "qualified charitable
3 gift annuity" means an annuity described under section 501(m) (5) of
4 the internal revenue code and issued by an organization exempt
5 under section 501(c) (3) of the internal revenue code.

6 (16) Notwithstanding the requirements of subsections (4) and
7 (5), if a flow-through entity receives an exemption certificate
8 from a member other than a nonresident individual, the flow-through
9 entity shall not withhold a tax on the distributive share of the
10 business income of that member if all of the following conditions
11 are met:

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

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

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

21 (iii) Submit to the taxing jurisdiction of this state for
22 purposes of collection of the tax under this act together with
23 related interest and penalties under 1941 PA 122, MCL 205.1 to
24 205.31, imposed on the member with respect to the distributive
25 share of the business income of that member.

26 (b) The department may require the member to file the
27 exemption certificate with the department and provide a copy to the
28 flow-through entity.

29 (c) The department may require a flow-through entity that



1 receives an exemption certificate to attach a copy of the exemption
2 certificate to the annual reconciliation return as required by
3 section 711. A flow-through entity that is entirely exempt from the
4 withholding requirements of subsection (4) or (5) by this
5 subsection may be required to furnish a copy of the exemption
6 certificate in another manner prescribed by the department.

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

12 (17) The department may revoke the election provided for in
13 subsection (16) if it determines that the member or a flow-through
14 entity is not abiding by the terms of the exemption certificate or
15 the requirements of subsection (16). If the department does revoke
16 the election option under subsection (16), the department shall
17 notify the affected flow-through entity that withholding is
18 required on the member under subsection (4) or (5), beginning 60
19 days after notice of revocation is received.

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

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



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

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

5 (c) Articles of incorporation or other document of
6 organization adopted pursuant to section 83 or 93 of the state
7 housing development authority act of 1966, 1966 PA 346, MCL
8 125.1483 and 125.1493.

9 Sec. 711. (1) Every person required by this part to deduct and
10 withhold taxes for a tax year on income other than distributive
11 share of income from a flow-through entity shall furnish to the
12 person who received the income a statement in duplicate on or
13 before January 31 of the succeeding year of the total income paid
14 during the tax year and the amount deducted or withheld. However,
15 if employment is terminated before the close of a calendar year by
16 a person that goes out of business or permanently ceases to exist,
17 then the statement required by this subsection shall be issued
18 within 30 days after the last compensation, winnings, or payoff of
19 a winning ticket is paid. A duplicate of a statement made pursuant
20 to this section and an annual reconciliation return, MI-W3, shall
21 be filed with the department by February 28 of the succeeding year
22 for tax years before the 2018 tax year and by January 31 of the
23 succeeding year for the 2018 tax year and each tax year after 2018
24 except that a person that goes out of business or permanently
25 ceases to exist shall file the statement and the annual
26 reconciliation return within 30 days after going out of business or
27 permanently ceasing to exist. For tax years that begin before July
28 1, 2016, a flow-through entity that was required to withhold taxes
29 on distributive shares of business income shall file an annual



1 reconciliation return with the department no later than the last
2 day of the second month following the end of the flow-through
3 entity's federal tax year. The department may require a flow-
4 through entity to file an annual business income information return
5 with the department on the due date, including extensions, of its
6 annual federal information return.

7 (2) Every person required by this part to deduct or withhold
8 taxes shall make a return or report in form and content and at
9 times as prescribed by the department. An employer that has more
10 than 250 employees shall file its annual return or report required
11 under this section in electronic form. An employer that has entered
12 into an agreement with a community college pursuant to chapter 13
13 of the community college act of 1966, 1966 PA 331, MCL 389.161 to
14 389.166, and is required to deduct or withhold taxes from
15 compensation and make payments to a community college pursuant to
16 the agreement for a portion of those taxes withheld shall, for as
17 long as the agreement remains in effect, delineate in the return or
18 report required under this subsection between the amount deducted
19 or withheld and paid to the state and that amount paid to a
20 community college. An employer that has entered into a written
21 agreement pursuant to the good jobs for Michigan program created
22 under section 90h of the Michigan strategic fund act, 1984 PA 270,
23 MCL 125.2090h, shall, for as long as the written agreement remains
24 in effect, delineate in the return or report required under this
25 subsection the portion of those taxes withheld and paid to the
26 state that are attributable to certified new jobs. **An employer that**
27 **is required to deduct or withhold taxes from compensation but**
28 **retains a portion of those taxes as an advance payment of the**
29 **credit under section 272a or 672 shall delineate in the return or**



1 report required under this subsection between the amount deducted
2 or withheld and paid to the state and that amount retained by the
3 employer as an advance payment of the credit under section 272a or
4 672.

5 (3) Every person who receives income subject to withholding
6 under this part shall furnish to the person required by this part
7 to deduct and withhold taxes information required to make an
8 accurate withholding. A person who receives income subject to
9 withholding under this part shall file with the person required by
10 this part to deduct and withhold taxes revised information within
11 10 days after a decrease in the number of exemptions or a change in
12 status from a nonresident to a resident. The person who receives
13 income subject to withholding under this part may file revised
14 information when the number of exemptions increases or when a
15 change in status occurs from that of a resident of this state to a
16 nonresident of this state. Revised information shall not be given
17 retroactive effect for withholding purposes. A person required by
18 this part to deduct and withhold taxes shall rely on this
19 information for withholding purposes unless directed by the
20 department to withhold on some other basis. If a person who
21 receives income subject to withholding under this part fails or
22 refuses to furnish information, the person required by this part to
23 deduct and withhold taxes shall withhold at the full rate of tax
24 from the person's income subject to withholding under this part.

