

HOUSE BILL NO. 4879

May 19, 2021, Introduced by Rep. Farrington and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 12, 607, and 623 (MCL 206.12, 206.607, and 206.623), sections 12 and 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. 12. (1) "Flow-through entity" means an S corporation,
2 partnership, limited partnership, limited liability partnership, or
3 limited liability company. Flow-through entity does not include a

1 publicly traded partnership as that term is defined in section 7704
2 of the internal revenue code that has equity securities registered
3 with the securities and exchange commission under section 12 of
4 title I of the securities exchange act of 1934, 15 USC 78l.

5 (2) "Gross income" means gross income as defined in the
6 internal revenue code.

7 (3) "Internal revenue code" means the United States internal
8 revenue code of 1986 in effect on January 1, ~~2018~~2021 or, at the
9 option of the taxpayer, in effect for the tax year.

10 (4) "Member of a flow-through entity" means a shareholder of
11 an S corporation; a partner in a partnership or limited
12 partnership; or a member of a limited liability company.

13 (5) "Nonresident member" means any of the following that is a
14 member of a flow-through entity:

15 (a) An individual who is not domiciled in this state.

16 (b) A nonresident estate or trust.

17 (c) A flow-through entity with a nonresident member.

18 Sec. 607. (1) "Federal taxable income" means taxable income as
19 defined in section 63 of the internal revenue code, except that
20 federal taxable income shall be calculated as if section 168(k) and
21 section 199 of the internal revenue code were not in effect.

22 (2) "Flow-through entity" means an entity that for the
23 applicable tax year is treated as a subchapter S corporation under
24 section 1362(a) of the internal revenue code, a general
25 partnership, a trust, a limited partnership, a limited liability
26 partnership, or a limited liability company, that for the tax year
27 is not taxed as a corporation for federal income tax purposes.
28 Flow-through entity does not include any entity disregarded under
29 section 699.

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

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

6 (b) Has substantial operations outside the United States, the
7 District of Columbia, any territory or possession of the United
8 States except for the Commonwealth of Puerto Rico, or a political
9 subdivision of any of the foregoing.

10 (c) At least 80% of its income is active foreign business
11 income as defined in section 861(c)(1)(B) of the internal revenue
12 code.

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

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

20 (b) Amounts received by the taxpayer as an agent solely on
21 behalf of the principal that are expended by the taxpayer for any
22 of the following:

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

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

29 (iii) Principal and interest under a mortgage loan or land

1 contract, lease or rental payments, or taxes, utilities, or
2 insurance premiums relating to real or personal property owned or
3 leased by the principal.

4 (iv) A capital asset of a type that is, or under the internal
5 revenue code will become, eligible for depreciation, amortization,
6 or accelerated cost recovery by the principal for federal income
7 tax purposes, or for real property owned or leased by the
8 principal.

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

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

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

19 (d) Amounts received by an advertising agency used to acquire
20 advertising media time, space, production, or talent on behalf of
21 another person.

22 (e) Notwithstanding any other provision of this section,
23 amounts received by a taxpayer that manages real property owned by
24 the taxpayer's client that are deposited into a separate account
25 kept in the name of the taxpayer's client and that are not
26 reimbursements to the taxpayer and are not indirect payments for
27 management services that the taxpayer provides to that client.

28 (f) Proceeds from the taxpayer's transfer of an account
29 receivable if the sale that generated the account receivable was

1 included in gross receipts for federal income tax purposes. This
2 subdivision does not apply to a taxpayer that during the tax year
3 both buys and sells any receivables.

4 (g) Proceeds from any of the following:

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

6 (ii) The original issue of debt instruments.

7 (h) Refunds from returned merchandise.

8 (i) Cash and in-kind discounts.

9 (j) Trade discounts.

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

11 (l) Security deposits.

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

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

14 (o) Proceeds from a sale, transaction, exchange, involuntary
15 conversion, or other disposition of tangible, intangible, or real
16 property that is a capital asset as defined in section 1221(a) of
17 the internal revenue code or land that qualifies as property used
18 in the trade or business as defined in section 1231(b) of the
19 internal revenue code, less any gain from the disposition to the
20 extent that gain is included in federal taxable income.

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

24 (5) "Insurance company" means an authorized insurer as defined
25 in section 108 of the insurance code of 1956, 1956 PA 218, MCL
26 500.108. Insurance company does not include a health maintenance
27 organization authorized under chapter 35 of the insurance code of
28 1956, 1956 PA 218, MCL 500.3501 to 500.3573.

29 (6) "Internal revenue code" means the United States internal

1 revenue code of 1986 in effect on January 1, ~~2018~~**2021** or, at the
2 option of the taxpayer, in effect for the tax year.

3 (7) "Member", when used in reference to a flow-through entity,
4 means a shareholder of a subchapter S corporation, a partner in a
5 general partnership, a limited partnership, or a limited liability
6 partnership, a member of a limited liability company, or a
7 beneficiary of a trust that is a flow-through entity.

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

16 (2) The corporate income tax base means a taxpayer's business
17 income subject to the following adjustments, before allocation or
18 apportionment, and the adjustment in subsection (4) after
19 allocation or apportionment:

20 (a) Add interest income and dividends derived from obligations
21 or securities of states other than this state, in the same amount
22 that was excluded from federal taxable income, less the related
23 portion of expenses not deducted in computing federal taxable
24 income because of sections 265 and 291 of the internal revenue
25 code.

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

29 (c) Add any carryback or carryover of a net operating loss to

1 the extent deducted in arriving at federal taxable income, **less any**
2 **carryback allowed for losses arising in 2018, 2019, and 2020 as**
3 **provided in section 172(b)(1)(D) of the internal revenue code.**

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

10 (e) Except as otherwise provided under this subdivision, to
11 the extent deducted in arriving at federal taxable income, add any
12 royalty, interest, or other expense paid to a person related to the
13 taxpayer by ownership or control for the use of an intangible asset
14 if the person is not included in the taxpayer's unitary business
15 group. The addition of any royalty, interest, or other expense
16 described under this subdivision is not required to be added if the
17 taxpayer can demonstrate that the transaction has a nontax business
18 purpose, is conducted with arm's-length pricing and rates and terms
19 as applied in accordance with sections 482 and 1274(d) of the
20 internal revenue code, and 1 of the following is true:

21 (i) The transaction is a pass through of another transaction
22 between a third party and the related person with comparable rates
23 and terms.

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

27 (iii) An addition would be unreasonable as determined by the
28 state treasurer.

29 (iv) The related person recipient of the transaction is

1 organized under the laws of a foreign nation which has in force a
2 comprehensive income tax treaty with the United States.

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

5 (g) ~~For tax years beginning after December 31, 2011, eliminate~~
6 **Eliminate** all of the following:

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

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

11 (h) ~~For tax years beginning after December 31, 2012, for~~ **For** a
12 qualified taxpayer, eliminate all of the following:

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

15 (ii) Expenses related to the income deductible under
16 subparagraph (i) to the extent deducted in arriving at federal
17 taxable income.

18 (3) For purposes of subsection (2), the business income of a
19 unitary business group is the sum of the business income of each
20 person included in the unitary business group less any items of
21 income and related deductions arising from transactions including
22 dividends between persons included in the unitary business group.

23 (4) Deduct any available business loss incurred after December
24 31, 2011. As used in this subsection, "business loss" means a
25 negative business income taxable amount after allocation or
26 apportionment. For purposes of this subsection, a taxpayer that
27 acquires the assets of another corporation in a transaction
28 described under section 381(a)(1) or (2) of the internal revenue
29 code may deduct any business loss attributable to that distributor

1 or transferor corporation. The business loss shall be carried
2 forward to the year immediately succeeding the loss year as an
3 offset to the allocated or apportioned corporate income tax base,
4 then successively to the next 9 taxable years following the loss
5 year or until the loss is used up, whichever occurs first.

6 (5) As used in this section, "oil and gas" means oil and gas
7 that is subject to severance tax under 1929 PA 48, MCL 205.301 to
8 205.317.