

HOUSE BILL NO. 6460

October 11, 2022, Introduced by Reps. Carra and Bezotte 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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 703. (1) ~~A~~**Through December 31, 2022, a** person who
2 disburses pension or annuity payments, except as otherwise provided
3 under this section, shall withhold a tax in an amount computed by

1 applying the rate prescribed in section 51 on the taxable part of
2 payments from an employer pension, annuity, profit-sharing, stock
3 bonus, or other deferred compensation plan as well as from an
4 individual retirement arrangement, an annuity, an endowment, or a
5 life insurance contract issued by a life insurance company.

6 **Beginning on and after January 1, 2023, a person who disburses**
7 **pension or annuity payments is not required to deduct and withhold**
8 **a tax in an amount computed by applying the rate prescribed in**
9 **section 51 on the taxable part of payments from an employer**
10 **pension, annuity, profit-sharing, stock bonus, or other deferred**
11 **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 unless the person receiving the**
14 **pension or annuity payment furnishes the person that disburses the**
15 **pension or annuity payment with a completed MI W-4P form and opts**
16 **in to have income tax withheld from those pension or annuity**
17 **payments.** Withholding ~~shall~~**must** be calculated on the taxable
18 disbursement after deducting from the taxable portion the same
19 proportion of the total amount of personal and dependency
20 exemptions of the individual allowed under this act. Withholding is
21 not required on any part of a distribution that is not expected to
22 be includable in the recipient's gross income or that is deductible
23 from adjusted gross income under section 30(1)(e) or (f).

24 (2) Every employer in this state required under the provisions
25 of the internal revenue code to withhold a tax on the compensation
26 of an individual, except as otherwise provided, shall deduct and
27 withhold a tax in an amount computed by applying, except as
28 provided by subsection (14), the rate prescribed in section 51 to
29 the remainder of the compensation after deducting from compensation

1 the same proportion of the total amount of personal and dependency
2 exemptions of the individual allowed under this act that the period
3 of time covered by the compensation is of 1 year. The department
4 may prescribe withholding tables that may be used by employers to
5 compute the amount of tax required to be withheld.

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

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

1 distributive share of the business income of each member that is a
2 corporation or that is a flow-through entity. For purposes of
3 calculating the \$200,000.00 withholding threshold, the business
4 income of a flow-through entity ~~shall~~**must** be apportioned to this
5 state by multiplying the business income by the sales factor of the
6 flow-through entity. The sales factor of the flow-through entity is
7 a fraction, the numerator of which is the total sales of the flow-
8 through entity in this state during the tax year and the
9 denominator of which is the total sales of the flow-through entity
10 everywhere during the tax year. As used in this subsection,
11 "business income" means that term as defined in section ~~603(2)~~.
12 **603(3)**. For a partnership or S corporation, business income
13 includes payments and items of income and expense that are
14 attributable to business activity of the partnership or S
15 corporation and separately reported to the members. As used in this
16 subsection, "sales" means that term as defined in section 609 and
17 sales in this state is determined as provided in sections 665 and
18 669. All of the taxes withheld under this section ~~shall~~ accrue to
19 the state on April 15, July 15, and October 15 of the flow-through
20 entity's tax year and January 15 of the following year, except a
21 flow-through entity that is not on a calendar year basis shall
22 substitute the appropriate due dates in the flow-through entity's
23 fiscal year that correspond to those in a calendar year.

24 Withholding for each period ~~shall~~**must** be equal to 1/4 of the total
25 withholding calculated on the distributive share of business income
26 that is reasonably expected to accrue during the tax year of the
27 flow-through entity.

28 (5) For tax years that begin before July 1, 2016, if a flow-
29 through entity is subject to the withholding requirements of

1 subsection (4), then a member of that flow-through entity that is
2 itself a flow-through entity shall withhold a tax on the
3 distributive share of business income as described in subsection
4 (4) of each of its members. The department shall apply tax withheld
5 by a flow-through entity on the distributive share of business
6 income of a member flow-through entity to the withholding required
7 of that member flow-through entity. All of the taxes withheld under
8 this section ~~shall~~ accrue to the state on April 15, July 15, and
9 October 15 of the flow-through entity's tax year and January 15 of
10 the following year, except a flow-through entity that is not on a
11 calendar year basis shall substitute the appropriate due dates in
12 the flow-through entity's fiscal year that correspond to those in a
13 calendar year. Withholding for each period ~~shall~~ **must** be equal to
14 1/4 of the total withholding calculated on the distributive share
15 of business income that is reasonably expected to accrue during the
16 tax year of the flow-through entity.

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

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

27 (8) Every casino licensee or race meeting licensee or track
28 licensee shall report winnings of a resident reportable by the
29 casino licensee or race meeting licensee or track licensee under

1 the internal revenue code to the department in the same manner and
2 format as required under the internal revenue code.

3 (9) Every eligible production company shall, to the extent not
4 withheld by a professional services corporation or professional
5 employer organization, deduct and withhold a tax in an amount
6 computed by applying the rate prescribed in section 51 to the
7 remainder of the payments made to the professional services
8 corporation or professional employer organization for the services
9 of a performing artist or crew member after deducting from those
10 payments the same proportion of the total amount of personal and
11 dependency exemptions of the individuals allowed under this act.

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

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

1 within 15 days after the end of any month or as provided in section
2 705 for as long as the agreement remains in effect. For purposes of
3 this act and 1941 PA 122, MCL 205.1 to 205.31, payments made by an
4 employer to a community college under this subsection ~~shall be~~**are**
5 considered income taxes paid to this state.

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

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

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

26 (15) A person who disburses annuity payments pursuant to the
27 terms of a qualified charitable gift annuity is not required to
28 deduct and withhold a tax on those payments as prescribed under
29 subsection (1). As used in this subsection, "qualified charitable

1 gift annuity" means an annuity described under section 501(m) (5) of
2 the internal revenue code and issued by an organization exempt
3 under section 501(c) (3) of the internal revenue code.

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

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

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

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

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

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

27 (c) The department may require a flow-through entity that
28 receives an exemption certificate to attach a copy of the exemption
29 certificate to the annual reconciliation return as required by

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

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

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

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

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

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

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

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

7 Sec. 711. (1) Every person required by this part to deduct and
8 withhold taxes for a tax year on income other than distributive
9 share of income from a flow-through entity shall furnish to the
10 person who received the income a statement in duplicate on or
11 before January 31 of the succeeding year of the total income paid
12 during the tax year and the amount deducted or withheld. **Beginning**
13 **on and after January 1, 2023, a person who disburses pension or**
14 **annuity payments shall, regardless of whether the person that**
15 **receives a pension or annuity payment opts in to having income**
16 **taxes withheld by completing a MI W-4P, furnish to the person who**
17 **received the pension or annuity payment a statement in duplicate on**
18 **or before January 31 of the succeeding year of the total income**
19 **paid during the tax year and, if applicable, the amount deducted or**
20 **withheld.** However, if employment is terminated before the close of
21 a calendar year by a person that goes out of business or
22 permanently ceases to exist, then the statement required by this
23 subsection ~~shall~~**must** be issued within 30 days after the last
24 compensation, winnings, or payoff of a winning ticket is paid. A
25 duplicate of a statement made pursuant to this section and an
26 annual reconciliation return, MI-W3, ~~shall~~**must** be filed with the
27 department by February 28 of the succeeding year for tax years
28 before the 2018 tax year and by January 31 of the succeeding year
29 for the 2018 tax year and each tax year after 2018 except that a

1 person that goes out of business or permanently ceases to exist
2 shall file the statement and the annual reconciliation return
3 within 30 days after going out of business or permanently ceasing
4 to exist. For tax years that begin before July 1, 2016, a flow-
5 through entity that was required to withhold taxes on distributive
6 shares of business income shall file an annual reconciliation
7 return with the department no later than the last day of the second
8 month following the end of the flow-through entity's federal tax
9 year. The department may require a flow-through entity to file an
10 annual business income information return with the department on
11 the due date, including extensions, of its annual federal
12 information return.

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

1 in effect, delineate in the return or report required under this
2 subsection the portion of those taxes withheld and paid to the
3 state that are attributable to certified new jobs.

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