

# SENATE BILL NO. 392

April 27, 2021, Introduced by Senator BUMSTEAD and referred to the Committee on Finance.

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

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 623. (1) Except as otherwise provided in this part, there  
2 is levied and imposed a corporate income tax on every taxpayer with  
3 business activity within this state or ownership interest or  
4 beneficial interest in a flow-through entity that has business  
5 activity in this state unless prohibited by 15 USC 381 to 384. The  
6 corporate income tax is imposed on the corporate income tax base,  
7 after allocation or apportionment to this state, at the ~~rate of~~

1 following rates in the following circumstances:

2 (a) Through December 31, 2020, 6.0%.

3 (b) Beginning January 1, 2021 through December 31, 2021, 5.5%.

4 (c) On and after January 1, 2022, 4.9%.

5 (2) The corporate income tax base means a taxpayer's business  
6 income subject to the following adjustments, before allocation or  
7 apportionment, and the adjustment in subsection (4) after  
8 allocation or apportionment:

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

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

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

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

26 (e) Except as otherwise provided under this subdivision, to  
27 the extent deducted in arriving at federal taxable income, add any  
28 royalty, interest, or other expense paid to a person related to the  
29 taxpayer by ownership or control for the use of an intangible asset

1 if the person is not included in the taxpayer's unitary business  
2 group. The addition of any royalty, interest, or other expense  
3 described under this subdivision is not required to be added if the  
4 taxpayer can demonstrate that the transaction has a nontax business  
5 purpose, is conducted with arm's-length pricing and rates and terms  
6 as applied in accordance with sections 482 and 1274(d) of the  
7 internal revenue code, and 1 of the following is true:

8 (i) The transaction is a pass through of another transaction  
9 between a third party and the related person with comparable rates  
10 and terms.

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

14 (iii) An addition would be unreasonable as determined by the  
15 state treasurer.

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

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

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

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

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

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

29 (i) Income derived from a mineral to the extent included in

1 federal taxable income.

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

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

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

22 (5) As used in this section, "oil and gas" means oil and gas  
23 that is subject to severance tax under 1929 PA 48, MCL 205.301 to  
24 205.317.

25 Enacting section 1. This amendatory act is intended to be  
26 retroactive and applies to all business activity that occurs on and  
27 after January 1, 2021.