

SENATE BILL NO. 1050

October 23, 2024, Introduced by Senator ANTHONY and referred to the Committee on Regulatory Affairs.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 12, 607, 699, 701, 805, and 845 (MCL 206.12, 206.607, 206.699, 206.701, 206.805, and 206.845), sections 12 and 607 as amended by 2018 PA 38, section 699 as added by 2011 PA 309, section 701 as amended by 2022 PA 148, and sections 805 and 845 as added by 2021 PA 135, and by adding section 339.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12. (1) "Flow-through entity" means an S corporation,

partnership, limited partnership, limited liability partnership, or limited liability company. Flow-through entity does not include a publicly traded partnership as that term is defined in section 7704 of the internal revenue code that has equity securities registered with the securities and exchange commission under section 12 of title I of the securities exchange act of 1934, 15 USC 78l, **or a person treated as a corporation under section 339.**

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

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

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

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

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

(b) A nonresident estate or trust.

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

Sec. 339. Notwithstanding any other provision of this act, a person that converts into a limited liability company under section 7 of 1883 PA 129, MCL 484.7, is treated as a corporation for purposes of this part unless that converted entity is a disregarded entity for federal income tax filing purposes under the internal revenue code and its regarded owner is treated as a corporation for state and federal income tax purposes.

Sec. 607. (1) "Federal taxable income" means taxable income as defined in section 63 of the internal revenue code, except that

1 federal taxable income shall be calculated as if section 168(k) and
 2 section 199 of the internal revenue code were not in effect.

3 (2) "Flow-through entity" means an entity that for the
 4 applicable tax year is treated as a subchapter S corporation under
 5 section 1362(a) of the internal revenue code, a general
 6 partnership, a trust, a limited partnership, a limited liability
 7 partnership, or a limited liability company, that for the tax year
 8 is not taxed as a corporation for federal income tax purposes.

9 Flow-through entity does not include any entity disregarded **or**
 10 **treated as a corporation** under section 699.

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

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

16 (b) Has substantial operations outside the United States, the
 17 District of Columbia, any territory or possession of the United
 18 States except for the Commonwealth of Puerto Rico, or a political
 19 subdivision of any of the foregoing.

20 (c) At least 80% of its income is active foreign business
 21 income as defined in section ~~861(c)(1)(B)~~ **871(l)(1)(B)(ii)** of the
 22 internal revenue code.

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

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

1 (b) Amounts received by the taxpayer as an agent solely on
2 behalf of the principal that are expended by the taxpayer for any
3 of the following:

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

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

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

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

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

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

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

29 (d) Amounts received by an advertising agency used to acquire

1 advertising media time, space, production, or talent on behalf of
2 another person.

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

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

14 (g) Proceeds from any of the following:

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

16 (ii) The original issue of debt instruments.

17 (h) Refunds from returned merchandise.

18 (i) Cash and in-kind discounts.

19 (j) Trade discounts.

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

21 (l) Security deposits.

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

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

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

1 extent that gain is included in federal taxable income.

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

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

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

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

18 Sec. 699. Notwithstanding any other provision of this act, a
19 **both of the following apply:**

20 (a) A person that is a disregarded entity for federal income
21 tax purposes under the internal revenue code ~~shall be~~ **is** classified
22 as a disregarded entity for purposes of parts 2 and 3 of this act.

23 (b) **A person that converts into a limited liability company**
24 **under section 7 of 1883 PA 129, MCL 484.7, is treated as a**
25 **corporation for purposes of parts 2 and 3 of this act unless that**
26 **converted entity is a disregarded entity for federal income tax**
27 **filing purposes under the internal revenue code and its regarded**
28 **owner is treated as a corporation for state and federal income tax**
29 **purposes.**

1 Sec. 701. As used in this chapter:

2 (a) "Casino" means that term as defined in section 110.

3 (b) "Casino licensee" means a person licensed to operate a
4 casino under the Michigan Gaming Control and Revenue Act, 1996 IL
5 1, MCL 432.201 to 432.226.

6 (c) "Eligible production company" means that term as defined
7 under section 455 of the Michigan business tax act, 2007 PA 36, MCL
8 208.1455.

9 (d) "Flow-through entity" means an entity that for the
10 applicable tax year is treated as an S corporation under section
11 1362(a) of the internal revenue code, a general partnership, a
12 limited partnership, a limited liability partnership, or a limited
13 liability company, that for the applicable tax year is not taxed as
14 a corporation for federal income tax purposes. Flow-through entity
15 does not include any entity disregarded **or treated as a corporation**
16 under section 699.

17 (e) "Member" means a shareholder of an S corporation, a
18 partner in a general partnership, a limited partnership, or a
19 limited liability partnership, a member of a limited liability
20 company, or a beneficiary of a trust, that is a flow-through
21 entity.

22 (f) "Nonresident" means an individual who is not a resident of
23 or domiciled in this state, a business entity that does not have
24 its commercial domicile in this state, or a trust not organized in
25 this state.

26 (g) "Partnership" means a taxpayer that is required to or has
27 elected to file as a partnership for federal income tax purposes.

28 (h) "Publicly traded partnership" means that term as defined
29 under section 7704 of the internal revenue code.

(i) "Race meeting licensee" and "track licensee" mean a person to whom a race meeting license or track license is issued pursuant to section 8 of the horse racing law of 1995, 1995 PA 279, MCL 431.308.

(j) "S corporation" means a corporation electing taxation under ~~subchapter S of chapter 1 of subtitle A of the internal revenue code~~, sections 1361 to 1379 of the internal revenue code.

Sec. 805. (1) "Federal taxable income" means taxable income as defined in section 63 of the internal revenue code without the deductions described under section 703(a)(2) of the internal revenue code. For the purposes of this part in computing federal taxable income, an S corporation shall be treated as a corporation under section 1361(a)(2) of the internal revenue code and a partnership shall be treated as an association taxable as a corporation pursuant to an election under 26 CFR 301.7701-3(a).

(2) "Financial institution" means that term as defined in section 651.

(3) "Flow-through entity" means an entity that for the applicable tax year is treated as an S corporation or a partnership under the internal revenue code for federal income tax purposes. Flow-through entity does not include a publicly traded partnership, any entity disregarded **or treated as a corporation** under section 845, or any person subject to the tax imposed under chapter 13.

(4) "Insurance company" means that term as defined in section 607.

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

(6) "Member", when used in reference to a flow-through entity,

1 means a shareholder of an S corporation or a partner or member in a
2 partnership.

3 Sec. 845. Notwithstanding any other provision of this act, a
4 **both of the following apply:**

5 (a) A person that is a disregarded entity for federal income
6 tax purposes under the internal revenue code ~~shall be~~ **is** classified
7 as a disregarded entity for purposes of this part.

8 (b) A person that converts into a limited liability company
9 under section 7 of 1883 PA 129, MCL 484.7, is treated as a
10 corporation for purposes of this part unless that converted entity
11 is a disregarded entity for federal income tax filing purposes
12 under the internal revenue code and its regarded owner is treated
13 as a corporation for state and federal income tax purposes.

14 Enacting section 1. This amendatory act does not take effect
15 unless all of the following bills of the 102nd Legislature are
16 enacted into law:

17 (a) Senate Bill No. 982.

18 (b) Senate Bill No. 983.

19 (c) Senate Bill No. 984.