

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 234**

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending sections 651, 653, and 657 (MCL 206.651, 206.653, and
206.657), section 651 as amended by 2011 PA 171, section 653 as
amended by 2011 PA 183, and section 657 as added by 2011 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 651. As used in this chapter:

2 (a) "Billing address" means the location indicated in the
3 books and records of the financial institution on the first day of
4 the tax year or on a later date in the tax year when the customer
5 relationship began as the address where any notice, statement, or
6 bill relating to a customer's account is mailed.

7 (b) "Borrower is located in this state" or "credit card holder
8 is located in this state" means a borrower, other than a credit

1 card holder, that is engaged in a trade or business which maintains
2 its commercial domicile in this state, or a borrower that is not
3 engaged in a trade or business or a credit card holder whose
4 billing address is in this state.

5 (c) "Commercial domicile" means the headquarters of the trade
6 or business, that is the place from which the trade or business is
7 principally managed and directed, or if a financial institution is
8 organized under the laws of a foreign country, of the Commonwealth
9 of Puerto Rico, or any territory or possession of the United
10 States, such financial institution's commercial domicile shall be
11 deemed for the purposes of this chapter to be the state of the
12 United States or the District of Columbia from which such financial
13 institution's trade or business in the United States is principally
14 managed and directed. It shall be presumed, subject to rebuttal,
15 that the location from which the financial institution's trade or
16 business is principally managed and directed is the state of the
17 United States or the District of Columbia to which the greatest
18 number of employees are regularly connected or out of which they
19 are working, irrespective of where the services of such employees
20 are performed, as of the last day of the tax year.

21 (d) "Credit card" means a credit, travel, or entertainment
22 card.

23 (e) "Credit card issuer's reimbursement fee" means the fee a
24 financial institution receives from a merchant's bank because 1 of
25 the persons to whom the financial institution has issued a credit
26 card has charged merchandise or services to the credit card.

27 **(F) "FFIEC" MEANS THE FEDERAL FINANCIAL INSTITUTIONS**

1 EXAMINATION COUNCIL ESTABLISHED PURSUANT TO SECTION 1004 OF THE
2 FINANCIAL INSTITUTIONS REGULATORY AND INTEREST RATE CONTROL ACT OF
3 1978, 12 USC 3303.

4 (G) ~~(F)~~—"Financial institution" means any of the following:

5 (i) A bank holding company, a national bank, a state chartered
6 bank, a state chartered savings bank, a federally chartered savings
7 association, or a federally chartered farm credit system
8 institution.

9 (ii) Any entity, other than an entity subject to the tax
10 imposed under chapter 12, who is directly or indirectly owned by an
11 entity described in subparagraph (i) and is a member of the unitary
12 business group.

13 (iii) A unitary business group of entities described in
14 subparagraph (i) or (ii), or both.

15 (H) ~~(G)~~—"Gross business" means the sum of the following less
16 transactions between those entities included in a unitary business
17 group:

18 (i) Fees, commissions, or other compensation for financial
19 services.

20 (ii) Net gains, not less than zero, from the sale of loans and
21 other intangibles.

22 (iii) Net gains, not less than zero, from trading in stocks,
23 bonds, or other securities.

24 (iv) Interest charged to customers for carrying debit balances
25 of margin accounts.

26 (v) Interest and dividends received.

27 (vi) Any other gross proceeds resulting from the operation as

1 a financial institution.

2 (I) ~~(h)~~ "Loan" means any extension of credit resulting from
3 direct negotiations between the financial institution and its
4 customer, or the purchase, in whole or in part, of such extension
5 of credit from another. Loans include participations, syndications,
6 and leases treated as loans for federal income tax purposes. Loans
7 shall not include properties treated as loans under section 595 of
8 the internal revenue code, futures or forward contracts, options,
9 notional principal contracts such as swaps, credit card
10 receivables, including purchased credit card relationships, non-
11 interest-bearing balances due from depository institutions, cash
12 items in the process of collection, federal funds sold, securities
13 purchased under agreements to resell, assets held in a trading
14 account, securities, interests in a real estate mortgage investment
15 conduit, or other mortgage-backed or asset-backed security, and
16 other similar items.

17 (J) ~~(i)~~ "Loan secured by real property" means that 50% or more
18 of the aggregate value of the collateral used to secure a loan or
19 other obligation, when valued at fair market value as of the time
20 the original loan or obligation was incurred, was real property.

21 (K) ~~(j)~~ "Merchant discount" means the fee or negotiated
22 discount charged to a merchant by the financial institution for the
23 privilege of participating in a program whereby a credit card is
24 accepted in payment for merchandise or services sold to the credit
25 card holder.

26 (L) ~~(k)~~ "Michigan obligations" means a bond, note, or other
27 obligation issued by a governmental unit described in section 3 of

1 the shared credit rating act, 1985 PA 227, MCL 141.1053.

2 **(M)** ~~(l)~~—"Participation" means an extension of credit in which
3 an undivided ownership interest is held on a pro rata basis in a
4 single loan or pool of loans and related collateral. In a loan
5 participation, the credit originator initially makes the loan and
6 then subsequently resells all or a portion of it to other lenders.
7 The participation may or may not be known to the borrower.

8 **(N)** ~~(m)~~—"Principal base of operations", with respect to
9 transportation property, means the place of more or less permanent
10 nature from which said property is regularly directed or
11 controlled. With respect to an employee, the principal base of
12 operations means the place of more or less permanent nature from
13 which the employee regularly does any of the following:

14 (i) Starts his or her work and to which he or she customarily
15 returns in order to receive instructions from his or her employer.

16 (ii) Communicates with his or her customers or other persons.

17 (iii) Performs any other functions necessary to the exercise
18 of his or her trade or profession at some other point or points.

19 **(O)** ~~(n)~~—"Real property owned" and "tangible personal property
20 owned" mean real and tangible personal property respectively on
21 which the financial institution may claim depreciation for federal
22 income tax purposes or to which the financial institution holds
23 legal title and on which no other person may claim depreciation for
24 federal income tax purposes or could claim depreciation if subject
25 to federal income tax. Real and tangible personal properties do not
26 include coin, currency, or property acquired in lieu of or pursuant
27 to a foreclosure.

1 **(P)** ~~(e)~~—"Regular place of business" means an office at which
2 the financial institution carries on its business in a regular and
3 systematic manner and which is continuously maintained, occupied,
4 and used by employees of the financial institution. The financial
5 institution shall have the burden of proving that an investment
6 asset or activity or trading asset or activity was properly
7 assigned to a regular place of business outside of this state by
8 demonstrating that the day-to-day decisions regarding the asset or
9 activity occurred at a regular place of business outside this
10 state. Where the day-to-day decisions regarding an investment asset
11 or activity or trading asset or activity occur at more than 1
12 regular place of business and 1 such regular place of business is
13 in this state and 1 such regular place of business is outside this
14 state, such asset or activity shall be considered to be located at
15 the regular place of business of the financial institution where
16 the investment or trading policies or guidelines with respect to
17 the asset or activity are established. Unless the financial
18 institution demonstrates to the contrary, such policies and
19 guidelines shall be presumed to be established at the commercial
20 domicile of the financial institution.

21 **(Q)** ~~(p)~~—"Rolling stock" means railroad freight or passenger
22 cars, locomotives, or other rail cars.

23 **(R)** ~~(q)~~—"Syndication" means an extension of credit in which 2
24 or more persons finance the credit and each person is at risk only
25 up to a specified percentage of the total extension of the credit
26 or up to a specified dollar amount.

27 **(S) "TOP-TIERED PARENT ENTITY" MEANS THE HIGHEST LEVEL ENTITY**

1 WITHIN THE UNITARY BUSINESS GROUP THAT IS REQUIRED TO FILE WITH A
2 REGULATORY AGENCY UNDER THE STANDARDS PRESCRIBED BY THE FFIEC.

3 (T) "TOTAL EQUITY CAPITAL" MEANS THAT SAME AMOUNT REPORTED BY
4 THE FINANCIAL INSTITUTION OR TOP-TIERED PARENT ENTITY, IN THE CASE
5 OF A UNITARY BUSINESS GROUP OF FINANCIAL INSTITUTIONS, AND AS
6 REPORTED FOR THE TAX YEAR ON ANY OF THE FOLLOWING FORMS OR
7 SUCCESSOR FORMS LISTED IN SUBPARAGRAPHS (i) THROUGH (iv) AND
8 DESIGNATED BY THE FFIEC, THAT ARE FILED WITH THE OFFICE OF THE
9 COMPTROLLER OF THE CURRENCY, THE FEDERAL DEPOSIT INSURANCE
10 CORPORATION, OR THE FEDERAL RESERVE SYSTEM, AND TOTAL EQUITY
11 CAPITAL INCLUDES THE INVESTMENT IN A PERSON THAT IS A FOREIGN
12 OPERATING ENTITY OR A FOREIGN PERSON:

13 (i) THE CONSOLIDATED FINANCIAL STATEMENT FOR HOLDING
14 COMPANIES, FR Y-9C.

15 (ii) THE PARENT COMPANY ONLY FINANCIAL STATEMENTS FOR SMALL
16 HOLDING COMPANIES, FR Y-9SP.

17 (iii) TO THE EXTENT THAT FR Y-9C OR FR Y-9SP ARE NOT FILED FOR
18 THE TAX YEAR, THE CONSOLIDATED REPORTS OF CONDITION AND INCOME,
19 CALL REPORTS, FFIEC 031, 032, 033, 034, OR 041.

20 (iv) A REPORT SIMILAR IN CONTENT AND DESIGNATED BY THE FFIEC.

21 (U) ~~(r)~~—"Transportation property" means vehicles and vessels
22 capable of moving under their own power, such as aircraft, trains,
23 water vessels, and motor vehicles, as well as any equipment or
24 containers attached to such property, such as rolling stock,
25 barges, or trailers.

26 (V) ~~(s)~~—"United States obligations" means all obligations of
27 the United States exempt from taxation under 31 USC 3124(a) or

1 exempt under the United States ~~constitution~~ **CONSTITUTION** or any
2 federal statute, including the obligations of any instrumentality
3 or agency of the United States that are exempt from state or local
4 taxation under the United States ~~constitution~~ **CONSTITUTION** or any
5 statute of the United States.

6 Sec. 653. (1) Every financial institution with substantial
7 nexus in this state is subject to a franchise tax. The franchise
8 tax is imposed upon the tax base of the financial institution as
9 determined under section 655 after allocation or apportionment to
10 this state, at the rate of 0.29%.

11 (2) For purposes of this section, a financial institution has
12 substantial nexus in this state if the financial institution
13 satisfies any of the following:

14 (a) Has a physical presence in this state for a period of more
15 than 1 day during the tax year.

16 (b) Actively solicits sales in this state and has gross
17 receipts of \$350,000.00 or more sourced to this state. As used in
18 this subdivision, "actively solicits" means that term as defined
19 under section 621.

20 (c) Has an ownership interest or a beneficial interest in a
21 flow-through entity, directly or indirectly through 1 or more other
22 flow-through entities, that has substantial nexus in this state as
23 provided under this section or section 621.

24 (3) The tax under this chapter is in lieu of the tax levied
25 and imposed under ~~chapter 11~~ **CHAPTERS 11 AND 12** of this part.

26 Sec. 657. (1) Except as otherwise provided under this chapter,
27 the tax base of a financial institution whose business activities

1 are confined solely to this state shall be allocated to this state.
2 The tax base of a financial institution whose business activities
3 are subject to tax both within and outside of this state shall be
4 apportioned to this state by multiplying the tax base by the gross
5 business factor.

6 (2) A financial institution whose business activities are
7 subject to tax both within and outside of this state is subject to
8 tax in another state in either of the following circumstances:

9 (a) The financial institution is subject to a business
10 privilege tax, a net income tax, a franchise tax measured by net
11 income, a franchise tax for the privilege of doing business, or a
12 corporate stock tax or a tax of the type imposed under this part in
13 that state.

14 (b) That state has jurisdiction to subject the financial
15 institution to 1 or more of the taxes listed in subdivision (a)
16 regardless of whether that state does or does not subject the
17 financial institution to that tax.

18 (3) Except as otherwise provided in subsection (4), the gross
19 business factor is a fraction, the numerator of which is the total
20 gross business of the financial institution in this state during
21 the tax year and the denominator of which is the total gross
22 business of the financial institution everywhere during the tax
23 year. **THE DENOMINATOR SHALL INCLUDE ANY GROSS BUSINESS ATTRIBUTABLE**
24 **TO THE FOREIGN BUSINESS OF A PERSON THAT IS A FOREIGN OPERATING**
25 **ENTITY OR A FOREIGN PERSON OR ATTRIBUTABLE TO OPERATIONS OUTSIDE OF**
26 **THE UNITED STATES.**

27 (4) Except as otherwise provided under this subsection, for a

~~financial institution that is included in a~~ unitary business group
OF FINANCIAL INSTITUTIONS, gross business includes gross business
in this state of every financial institution included in the
unitary business group without regard to whether the financial
institution has nexus in this state. Gross business between
financial institutions included in a unitary business group must be
eliminated in calculating the gross business factor.

**(5) FOR A UNITARY BUSINESS GROUP OF FINANCIAL INSTITUTIONS,
THE GROSS BUSINESS FACTOR SHALL INCLUDE THE GROSS BUSINESS OF ALL
MEMBERS OF THE UNITARY GROUP DURING THE TAX YEAR. FOR THOSE MEMBERS
THAT WERE ACQUIRED OR DISPOSED OF BY THE UNITARY BUSINESS GROUP
DURING THE TAX YEAR, THE GROSS BUSINESS FACTOR SHALL INCLUDE THE
GROSS BUSINESS OF THE PART-YEAR MEMBER FOR THAT PORTION OF THE TAX
YEAR DURING WHICH THE MEMBER MET THE CONTROL AND RELATIONSHIP TESTS
UNDER SECTION 611(6), OR FOR THE PORTION OF THE TAX YEAR FOR WHICH
THE MEMBER FILED AS A PART OF AN AFFILIATED GROUP UNDER SECTION
691(2) .**

Enacting section 1. This amendatory act is effective for tax
years beginning after December 31, 2017.

Enacting section 2. This amendatory act does not take effect
unless House Bill No. 5666 of the 98th Legislature is enacted into
law.