HB-5104, As Passed House, September 23, 2007

SUBSTITUTE FOR

HOUSE BILL NO. 5104

A bill to amend 2007 PA 36, entitled

"Michigan business tax act,"

by amending section 201 (MCL 208.1201).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 201. (1) Except as otherwise provided in this act, there is levied and imposed a business income tax on every taxpayer with business activity within this state unless prohibited by 15 USC 381 to 384. The business income tax is imposed on the business income tax base, after allocation or apportionment to this state, at the rate of 4.95%.

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

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

(b) Add all taxes on or measured by net income and the tax imposed under this act to the extent the taxes were deducted in arriving at federal taxable income.

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

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

(e) To the extent included in federal taxable income, add the loss or subtract the income from the business income tax base that is attributable to another entity whose business activities are taxable under this section or would be subject to the tax under this section if the business activities were in this state.

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

(*i*) Is a pass through of another transaction between a third party and the related person with comparable rates and terms.

(*ii*) Results in double taxation. For purposes of this subparagraph, double taxation exists if the transaction is subject to tax in another jurisdiction.

(*iii*) Is unreasonable as determined by the treasurer, and the taxpayer agrees that the addition would be unreasonable based on the taxpayer's facts and circumstances.

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

(h) To the extent included in federal taxable income, deduct any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer except to the extent that those net earnings represent a reasonable return on capital.

(I) SUBJECT TO THE LIMITATION PROVIDED UNDER THIS SUBDIVISION, IF THE BOOK-TAX DIFFERENCES FOR THE FIRST FISCAL PERIOD ENDING AFTER JULY 12, 2007 RESULT IN A DEFERRED LIABILITY FOR A PERSON SUBJECT TO TAX UNDER THIS ACT, DEDUCT THE FOLLOWING PERCENTAGES OF THE TOTAL BOOK-TAX DIFFERENCE FOR EACH QUALIFYING ASSET, FOR EACH OF THE SUCCESSIVE 15 TAX YEARS BEGINNING WITH THE 2015 TAX YEAR:

(*i*) FOR THE 2015 THROUGH 2019 TAX YEARS, 4%.

(*ii*) FOR THE 2020 THROUGH 2024 TAX YEARS, 6%.

(*iii*) FOR THE 2025 THROUGH 2029 TAX YEARS, 10%.

(3) THE DEDUCTION UNDER SUBSECTION (2)(I) SHALL NOT EXCEED THE AMOUNT NECESSARY TO OFFSET THE NET DEFERRED TAX LIABILITY OF THE TAXPAYER AS COMPUTED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES WHICH WOULD OTHERWISE RESULT FROM THE IMPOSITION OF THE BUSINESS INCOME TAX UNDER THIS SECTION AND THE MODIFIED GROSS RECEIPTS TAX UNDER SECTION 203 IF THE DEDUCTION PROVIDED UNDER THIS SUBDIVISION WERE NOT ALLOWED. FOR PURPOSES OF THE CALCULATION OF THE DEDUCTION UNDER SUBSECTION (2)(I), A BOOK-TAX DIFFERENCE SHALL ONLY BE USED ONCE IN THE CALCULATION OF THE DEDUCTION ARISING FROM THE TAXPAYER'S BUSINESS INCOME TAX BASE UNDER THIS SECTION AND ONCE IN THE CALCULATION OF THE DEDUCTION ARISING FROM THE TAXPAYER'S MODIFIED GROSS RECEIPTS TAX BASE UNDER SECTION 203. THE ADJUSTMENT UNDER SUBSECTION (2)(I) SHALL BE CALCULATED WITHOUT REGARD TO THE FEDERAL EFFECT OF THE DEDUCTION. IF THE ADJUSTMENT UNDER SUBSECTION (2)(I) IS GREATER THAN THE TAXPAYER'S BUSINESS INCOME TAX BASE, ANY ADJUSTMENT THAT IS UNUSED MAY BE CARRIED FORWARD AND APPLIED AS AN ADJUSTMENT TO THE TAXPAYER'S BUSINESS INCOME TAX BASE BEFORE APPORTIONMENT IN FUTURE YEARS. IN ORDER TO CLAIM THIS DEDUCTION, THE DEPARTMENT MAY REQUIRE THE TAXPAYER TO REPORT THE AMOUNT OF THIS DEDUCTION ON A FORM AS PRESCRIBED BY THE DEPARTMENT THAT IS TO BE FILED ON OR AFTER THE DATE THAT THE FIRST QUARTERLY RETURN AND ESTIMATED PAYMENT ARE DUE UNDER THIS ACT. AS USED IN SUBSECTION (2)(I) AND THIS SUBSECTION:

(A) "BOOK-TAX DIFFERENCE" MEANS THE DIFFERENCE, IF ANY,

BETWEEN THE PERSON'S QUALIFYING ASSET'S NET BOOK VALUE SHOWN ON THE PERSON'S BOOKS AND RECORDS FOR THE FIRST FISCAL PERIOD ENDING AFTER JULY 12, 2007 AND THE QUALIFYING ASSET'S TAX BASIS ON THAT SAME DATE.

(B) "QUALIFYING ASSET" MEANS ANY ASSET SHOWN ON THE PERSON'S BOOKS AND RECORDS FOR THE FIRST FISCAL PERIOD ENDING AFTER JULY 12, 2007, IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

(4) ~~(3)~~ For purposes of ~~subsection~~ **SUBSECTIONS** (2) **AND (3)**, the business income of a unitary business group is the sum of the business income of each person, other than a foreign operating entity or a person subject to the tax imposed under chapter 2A or 2B, included in the unitary business group less any items of income and related deductions arising from transactions including dividends between persons included in the unitary business group.

(5) ~~(4)~~ Deduct any available business loss incurred after December 31, 2007. As used in this subsection, "business loss" means a negative business income taxable amount after allocation or apportionment. The business loss shall be carried forward to the year immediately succeeding the loss year as an offset to the allocated or apportioned business income tax base, then successively to the next 9 taxable years following the loss year or until the loss is used up, whichever occurs first, but for not more than 10 taxable years after the loss year.

Enacting section 1. This amendatory act takes effect January 1, 2008.

[Enacting section 2. This amendatory act does not take effect unless House Bill No. 5194 of the 94th Legislature is enacted into law.]