

# HOUSE BILL No. 5104

August 8, 2007, Introduced by Reps. Bieda and Condino and referred to the Committee on Tax Policy.

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:

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

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

1 allocation or apportionment:

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

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

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

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

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

23 (f) Except as otherwise provided under this subdivision, to  
24 the extent deducted in arriving at federal taxable income, add any  
25 royalty, interest, or other expense paid to a person related to the  
26 taxpayer by ownership or control for the use of an intangible asset  
27 if the person is not included in the taxpayer's unitary business

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

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

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

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

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

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

24 **(I) FOR THE 2008 TAX YEAR, IF THE BOOK-TAX DIFFERENCE RESULTS**  
25 **IN A DEFERRED LIABILITY, ACCOUNT FOR THE BOOK-TAX DIFFERENCE AS AN**  
26 **ASSET ON THE TAXPAYER'S BOOKS AND RECORDS. FOR EACH TAX YEAR AFTER**  
27 **THE 2008 TAX YEAR, ADJUST TO THE EXTENT NECESSARY TO REFLECT A 10-**

1 YEAR AMORTIZATION OF THE BOOK-TAX DIFFERENCE FOR EACH QUALIFYING  
2 ASSET ON THE TAXPAYER'S BOOKS AND RECORDS, IN EQUAL INSTALLMENTS  
3 OVER EACH OF THE 10 TAX YEARS BEGINNING WITH THE 2013 TAX YEAR. IF  
4 THE ADJUSTMENT UNDER THIS SUBDIVISION IS GREATER THAN THE  
5 TAXPAYER'S BUSINESS INCOME TAX BASE, ANY ADJUSTMENT THAT IS UNUSED  
6 MAY BE CARRIED FORWARD AND APPLIED AS AN ADJUSTMENT TO THE  
7 TAXPAYER'S BUSINESS INCOME BEFORE APPORTIONMENT IN FUTURE YEARS. AS  
8 USED IN THIS SUBDIVISION:

9 (i) "BOOK-TAX DIFFERENCE" MEANS THE DIFFERENCE, IF ANY, BETWEEN  
10 THE TAXPAYER'S QUALIFYING ASSET'S NET BOOK VALUE SHOWN ON THE  
11 TAXPAYER'S BOOKS AND RECORDS ON DECEMBER 31, 2007, AND THE  
12 QUALIFYING ASSET'S ADJUSTED FEDERAL TAX BASIS ON DECEMBER 31, 2007.

13 (ii) "QUALIFYING ASSET" MEANS ANY ASSET SHOWN ON THE TAXPAYER'S  
14 BOOKS AND RECORDS ON DECEMBER 31, 2007, IN ACCORDANCE WITH  
15 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

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

23 (4) Deduct any available business loss incurred after December  
24 31, 2007. As used in this subsection, "business loss" means a  
25 negative business income taxable amount after allocation or  
26 apportionment. The business loss shall be carried forward to the  
27 year immediately succeeding the loss year as an offset to the

1 allocated or apportioned business income tax base, then  
2 successively to the next 9 taxable years following the loss year or  
3 until the loss is used up, whichever occurs first, but for not more  
4 than 10 taxable years after the loss year.

5 Enacting section 1. This amendatory act takes effect January  
6 1, 2008.