

HOUSE BILL No. 5893

March 13, 2008, Introduced by Rep. Tobocman and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 201 and 203 (MCL 208.1201 and 208.1203),
section 201 as amended by 2007 PA 145.

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 (5)~~ **ADJUSTMENTS IN**

1 **SUBSECTIONS (5) AND (6)** after 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) Subject to the limitation provided under this subdivision,
25 if the book-tax differences for the first fiscal period ending
26 after July 12, 2007 result in a deferred liability for a person
27 subject to tax under this act, deduct the following percentages of

1 the total book-tax difference for each qualifying asset, for each
2 of the successive 15 tax years beginning with the 2015 tax year:

3 (i) For the 2015 through 2019 tax years, 4%.

4 (ii) For the 2020 through 2024 tax years, 6%.

5 (iii) For the 2025 through 2029 tax years, 10%.

6 (3) The deduction under subsection (2)(i) shall not exceed the
7 amount necessary to offset the net deferred tax liability of the
8 taxpayer as computed in accordance with generally accepted
9 accounting principles which would otherwise result from the
10 imposition of the business income tax under this section and the
11 modified gross receipts tax under section 203 if the deduction
12 provided under this subdivision were not allowed. The deduction
13 under subsection (2)(i) is intended to flow through and reduce the
14 surcharge imposed and levied under section 281. For purposes of the
15 calculation of the deduction under subsection (2)(i), a book-tax
16 difference shall only be used once in the calculation of the
17 deduction arising from the taxpayer's business income tax base
18 under this section and once in the calculation of the deduction
19 arising from the taxpayer's modified gross receipts tax base under
20 section 203. The adjustment under subsection (2)(i) shall be
21 calculated without regard to the federal effect of the deduction.
22 If the adjustment under subsection (2)(i) is greater than the
23 taxpayer's business income tax base, any adjustment that is unused
24 may be carried forward and applied as an adjustment to the
25 taxpayer's business income tax base before apportionment in future
26 years. In order to claim this deduction, the department may require
27 the taxpayer to report the amount of this deduction on a form as

1 prescribed by the department that is to be filed on or after the
2 date that the first quarterly return and estimated payment are due
3 under this act. As used in subsection (2)(i) and this subsection:

4 (a) "Book-tax difference" means the difference, if any,
5 between the person's qualifying asset's net book value shown on the
6 person's books and records for the first fiscal period ending after
7 July 12, 2007 and the qualifying asset's tax basis on that same
8 date.

9 (b) "Qualifying asset" means any asset shown on the person's
10 books and records for the first fiscal period ending after July 12,
11 2007, in accordance with generally accepted accounting principles.

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

19 (5) Deduct any available business loss incurred after December
20 31, 2007. As used in this subsection, "business loss" means a
21 negative business income taxable amount after allocation or
22 apportionment. The business loss shall be carried forward to the
23 year immediately succeeding the loss year as an offset to the
24 allocated or apportioned business income tax base, then
25 successively to the next 9 taxable years following the loss year or
26 until the loss is used up, whichever occurs first, but for not more
27 than 10 taxable years after the loss year.

1 (6) DEDUCT ANY GAIN FROM THE SALE OF ANY RESIDENTIAL RENTAL
2 UNITS IN THIS STATE TO A QUALIFIED AFFORDABLE HOUSING PROJECT THAT
3 AGREES TO OPERATE THE RESIDENTIAL RENTAL UNITS AS RENT RESTRICTED
4 UNITS FOR A MINIMUM OF 15 YEARS. IF THE QUALIFIED AFFORDABLE
5 HOUSING PROJECT DOES NOT AGREE TO OPERATE ALL OF THE RESIDENTIAL
6 RENTAL UNITS AS RENT RESTRICTED UNITS, THE DEDUCTION UNDER THIS
7 SUBSECTION IS LIMITED TO AN AMOUNT EQUAL TO THE GAIN FROM THE SALE
8 MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE NUMBER OF
9 THOSE RESIDENTIAL RENTAL UNITS PURCHASED THAT ARE TO BE OPERATED AS
10 A RENT RESTRICTED UNIT AND THE DENOMINATOR IS THE NUMBER OF ALL
11 RESIDENTIAL RENTAL UNITS PURCHASED. IN ORDER TO CLAIM THIS
12 DEDUCTION, THE DEPARTMENT MAY REQUIRE THE TAXPAYER AND THE
13 PURCHASER TO REPORT THE AMOUNT OF THIS DEDUCTION ON A FORM AS
14 PRESCRIBED BY THE DEPARTMENT THAT IS TO BE SIGNED BY BOTH THE
15 TAXPAYER AND THE PURCHASER AND FILED WITH THE TAXPAYER'S ANNUAL
16 RETURN.

17 (7) IF THE PURCHASER OF THE RESIDENTIAL RENTAL UNITS FAILS TO
18 QUALIFY AND CONTINUE OPERATING AS A QUALIFIED AFFORDABLE HOUSING
19 PROJECT AND FAILS TO OPERATE ALL OR SOME OF THE RESIDENTIAL RENTAL
20 UNITS AS RENT RESTRICTED UNITS IN ACCORDANCE WITH THE AGREEMENT
21 ENTERED UPON THE PURCHASE OF THOSE UNITS WITHIN 15 YEARS AFTER THE
22 DEDUCTION IS CLAIMED BY A TAXPAYER UNDER SUBSECTION (6), AN AMOUNT
23 EQUAL TO 100% OF THE AMOUNT OF THE DEDUCTION ALLOWED UNDER
24 SUBSECTION (6) DIVIDED BY 15 SHALL BE ADDED BACK TO THE TAX
25 LIABILITY OF THE PURCHASER FOR EACH TAX YEAR THAT THE PURCHASER
26 FAILS TO COMPLY WITH THE AGREEMENT. AS USED IN SUBSECTION (6) AND
27 THIS SUBSECTION:

1 (A) "LIMITED DIVIDEND HOUSING ASSOCIATION" MEANS A LIMITED
2 DIVIDEND HOUSING ASSOCIATION ORGANIZED AND QUALIFIED PURSUANT TO
3 CHAPTER 7 OF THE STATE HOUSING DEVELOPMENT AUTHORITY ACT OF 1966,
4 1966 PA 346, MCL 125.1491 TO 125.1476.

5 (B) "QUALIFIED AFFORDABLE HOUSING PROJECT" MEANS A PERSON THAT
6 IS ORGANIZED, QUALIFIED, AND OPERATED AS A LIMITED DIVIDEND HOUSING
7 ASSOCIATION THAT HAS A LIMITATION ON THE AMOUNT OF DIVIDENDS OR
8 OTHER DISTRIBUTIONS THAT MAY BE DISTRIBUTED TO ITS OWNERS IN ANY
9 GIVEN YEAR AND HAS RESERVED FUNDING, SUBSIDIES, OR OPERATING
10 SUPPORT THROUGH 1 OR MORE OF THE FOLLOWING SOURCES AND PROGRAMS:

11 (i) MORTGAGE FINANCING PROVIDED BY THE MICHIGAN STATE HOUSING
12 DEVELOPMENT AUTHORITY CREATED IN SECTION 21 OF THE STATE HOUSING
13 DEVELOPMENT AUTHORITY ACT OF 1966, 1966 PA 346, MCL 125.1421, THE
14 UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OR THE
15 UNITED STATES DEPARTMENT OF AGRICULTURE FOR RURAL HOUSING SERVICE.

16 (ii) A TAX EXEMPT BOND ISSUED BY A NONPROFIT ORGANIZATION,
17 LOCAL GOVERNMENTAL UNIT, OR OTHER AUTHORITY.

18 (iii) A PAYMENT IN LIEU OF TAX AGREEMENT OR OTHER TAX ABATEMENT.

19 (iv) FUNDING FROM THE STATE OR A LOCAL GOVERNMENTAL UNIT
20 THROUGH A HOME INVESTMENTS PARTNERSHIP PROGRAM AUTHORIZED UNDER 42
21 USC 12741 TO 12756.

22 (v) A GRANT OR OTHER FUNDING FROM A FEDERAL HOME LOAN BANK'S
23 AFFORDABLE HOUSING PROGRAM.

24 (vi) FINANCING OR FUNDING UNDER THE NEW MARKETS TAX CREDIT
25 PROGRAM UNDER SECTION 45D OF THE INTERNAL REVENUE CODE.

26 (vii) FINANCING OR OTHER SUBSIDIES FROM ANY NEW PROGRAMS
27 SIMILAR TO ANY OF THE ABOVE.

1 (C) "RENT RESTRICTED UNIT" MEANS ANY RESIDENTIAL RENTAL UNIT'S
2 RENTAL INCOME IS RESTRICTED IN ACCORDANCE WITH SECTION 42(G)(1) OF
3 THE INTERNAL REVENUE CODE AS IF IT WAS A QUALIFIED LOW-INCOME
4 HOUSING PROJECT OR BY ANY OF THE PROGRAMS DESCRIBED UNDER
5 SUBDIVISION (B).

6 Sec. 203. (1) Except as otherwise provided in this act, there
7 is levied and imposed a modified gross receipts tax on every
8 taxpayer with nexus as determined under section 200. The modified
9 gross receipts tax is imposed on the modified gross receipts tax
10 base, after allocation or apportionment to this state at a rate of
11 0.80%.

12 (2) The tax levied and imposed under this section is upon the
13 privilege of doing business and not upon income or property.

14 (3) The modified gross receipts tax base means a taxpayer's
15 gross receipts **SUBJECT TO THE ADJUSTMENT IN SUBSECTION (6), IF**
16 **APPLICABLE**, less purchases from other firms before apportionment
17 under this act. The modified gross receipts of a unitary business
18 group is the sum of modified gross receipts of each person, other
19 than a foreign operating entity or a person subject to the tax
20 imposed under chapter 2A or 2B, included in the unitary business
21 group less any modified gross receipts arising from transactions
22 between persons included in the unitary business group.

23 (4) For the 2008 tax year, deduct 65% of any remaining
24 business loss carryforward calculated under section 23b(h) of
25 former 1975 PA 228 that was actually incurred in the 2006 or 2007
26 tax year to the extent not deducted in tax years beginning before
27 January 1, 2008. A deduction under this subsection shall not

1 include any business loss carryforward that was incurred before
2 January 1, 2006. If the taxpayer is a unitary business group, the
3 business loss carryforward under this subsection may only be
4 deducted against the modified gross receipts tax base of that
5 person included in the unitary business group calculated as if the
6 person was not included in the unitary business group.

7 (5) Nothing in this act shall prohibit a taxpayer who
8 qualifies for the credit under section 445 or a taxpayer who is a
9 dealer of new or used personal watercraft from collecting the tax
10 imposed under this section in addition to the sales price. The
11 amount remitted to the department for the tax under this section
12 shall not be less than the stated and collected amount.

13 (6) SUBJECT TO THE LIMITATION PROVIDED IN THIS SUBSECTION, FOR
14 A PERSON THAT IS A QUALIFIED AFFORDABLE HOUSING PROJECT, DEDUCT AN
15 AMOUNT EQUAL TO THAT PERSON'S TOTAL GROSS RECEIPTS ATTRIBUTABLE TO
16 RENTAL UNITS IN THIS STATE OWNED BY THE QUALIFIED AFFORDABLE
17 HOUSING PROJECT MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS
18 THE NUMBER OF RENT RESTRICTED UNITS IN THIS STATE OWNED BY THE
19 QUALIFIED AFFORDABLE HOUSING PROJECT AND THE DENOMINATOR OF WHICH
20 IS THE NUMBER OF ALL RENTAL UNITS IN THIS STATE OWNED BY THE
21 QUALIFIED AFFORDABLE HOUSING PROJECT. THE AMOUNT OF THE DEDUCTION
22 CALCULATED UNDER THIS SUBSECTION SHALL BE REDUCED BY THE AMOUNT OF
23 LIMITED DIVIDENDS OR OTHER DISTRIBUTIONS MADE TO THE PARTNERS,
24 MEMBERS, OR SHAREHOLDERS OF THE QUALIFIED AFFORDABLE HOUSING
25 PROJECT. AS USED IN THIS SUBSECTION:

26 (A) "LIMITED DIVIDEND HOUSING ASSOCIATION" MEANS A LIMITED
27 DIVIDEND HOUSING ASSOCIATION ORGANIZED AND QUALIFIED PURSUANT TO

1 CHAPTER 7 OF THE STATE HOUSING DEVELOPMENT AUTHORITY ACT OF 1966,
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4 IS ORGANIZED, QUALIFIED, AND OPERATED AS A LIMITED DIVIDEND HOUSING
5 ASSOCIATION THAT HAS A LIMITATION ON THE AMOUNT OF DIVIDENDS OR
6 OTHER DISTRIBUTIONS THAT MAY BE DISTRIBUTED TO ITS OWNERS IN ANY
7 GIVEN YEAR AND HAS RESERVED FUNDING, SUBSIDIES, OR OPERATING
8 SUPPORT THROUGH 1 OR MORE OF THE FOLLOWING SOURCES AND PROGRAMS:

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12 UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OR THE
13 UNITED STATES DEPARTMENT OF AGRICULTURE FOR RURAL HOUSING SERVICE.

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15 LOCAL GOVERNMENTAL UNIT, OR OTHER AUTHORITY.

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25 SIMILAR TO ANY OF THE ABOVE.

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