

HOUSE BILL No. 4629

March 19, 2009, Introduced by Reps. Lipton, Byrum, Clemente, Gonzales, Griffin, Kandrevas, Polidori, Spade, Hammel, Robert Jones, Nathan, Warren, Liss, Segal, Stanley, Bledsoe, Switalski, Young, Tlaib, Durhal, Leland, Haase, Dean and Melton 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), as amended by 2008 PA 168.

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 adjustments in subsections (5), (6), and (7)
10 after allocation or apportionment:

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

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

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

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

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

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

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

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

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

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

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

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

23 (i) Subject to the limitation provided under this subdivision,
24 if the book-tax differences for the first fiscal period ending
25 after July 12, 2007 result in a deferred liability for a person
26 subject to tax under this act, deduct the following percentages of
27 the total book-tax difference for each qualifying asset, for each

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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%.

**(J) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2008, TO THE
EXTENT INCLUDED IN FEDERAL TAXABLE INCOME, [DEDUCT] THE AMOUNT OF A
CHARITABLE CONTRIBUTION MADE TO THE ADVANCE TUITION PAYMENT FUND
CREATED UNDER SECTION 9 OF THE MICHIGAN EDUCATION TRUST ACT, 1986
PA 316, MCL 390.1429.**

(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. The deduction under subsection (2)(i) is intended to flow through and reduce the surcharge imposed and levied under section 281. 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

1 may be carried forward and applied as an adjustment to the
2 taxpayer's business income tax base before apportionment in future
3 years. In order to claim this deduction, the department may require
4 the taxpayer to report the amount of this deduction on a form as
5 prescribed by the department that is to be filed on or after the
6 date that the first quarterly return and estimated payment are due
7 under this act. As used in subsection (2)(i) and this subsection:

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

13 (b) "Qualifying asset" means any asset shown on the person's
14 books and records for the first fiscal period ending after July 12,
15 2007, in accordance with generally accepted accounting principles.

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

23 (5) 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 (6) Deduct any gain from the sale of any residential rental
6 units in this state to a qualified affordable housing project that
7 enters an agreement to operate the residential rental units as rent
8 restricted units for a minimum of 15 years. If the qualified
9 affordable housing project does not agree to operate all of the
10 residential rental units as rent restricted units, the deduction
11 under this subsection is limited to an amount equal to the gain
12 from the sale multiplied by a fraction, the numerator of which is
13 the number of those residential rental units purchased that are to
14 be operated as a rent restricted unit and the denominator is the
15 number of all residential rental units purchased. In order to claim
16 this deduction, the department may require the taxpayer and the
17 qualified affordable housing project to report the amount of this
18 deduction on a form as prescribed by the department that is to be
19 signed by both the taxpayer and the qualified affordable housing
20 project and filed with the taxpayer's annual return. The department
21 shall record a lien against the property subject to the operation
22 agreement for the total amount of the deduction allowed under this
23 subsection. The department shall notify the qualified affordable
24 housing project of the maximum amount of the lien that the
25 qualified affordable housing project may be liable for if the
26 qualified affordable housing project fails to qualify and operate
27 as provided in the operation agreement within 15 years after the

1 purchase. The lien shall become payable in an amount as provided
2 under this subsection to the state by the qualified affordable
3 housing project if the qualified affordable housing project fails
4 to qualify as a qualified affordable housing project and fails to
5 operate all or some of the residential rental units as rent
6 restricted units in accordance with the operation agreement entered
7 upon the purchase of those units within 15 years after the
8 deduction is claimed by a taxpayer under this subsection. An amount
9 equal to the product of 100% of the amount of the deduction allowed
10 under this subsection multiplied by a fraction, the numerator of
11 which is the difference between 15 and the number of years the
12 affordable housing project qualified and operated rent restricted
13 units in accordance with the agreement and the denominator is 15,
14 shall be added back to the tax liability of the qualified
15 affordable housing project for the tax year that the qualified
16 affordable housing project fails to comply with the agreement.

17 (7) Subject to the limitations provided in this subsection,
18 for a person that is a qualified affordable housing project, deduct
19 an amount equal to the product of that person's taxable income that
20 is attributable to residential rental units in this state owned by
21 the qualified affordable housing project multiplied by a fraction,
22 the numerator of which is the number of rent restricted units in
23 this state owned by that qualified affordable housing project and
24 the denominator of which is the number of all residential rental
25 units in this state owned by the qualified affordable housing
26 project. The amount of the deduction calculated under this
27 subsection shall be reduced by the amount of limited dividends or

1 other distributions made to the partners, members, or shareholders
 2 of the qualified affordable housing project. Taxable income that is
 3 attributable to residential rental units does not include income
 4 received by the management, construction, or development company
 5 for completion and operation of the project and those rental units.

6 (8) If a ~~qualified~~ **AN** affordable housing project no longer
 7 ~~meets the requirements of~~ **SATISFIES THE DEFINITION OF A QUALIFIED**
 8 **AFFORDABLE HOUSING PROJECT UNDER** subsection (9)(b) or fails to
 9 operate those residential rental units as rent restricted units in
 10 accordance with the operation agreement and the requirements ~~of~~
 11 **DESCRIBED UNDER** subsection (9)(c), the taxpayer is entitled to the
 12 deductions under subsections (6) and (7) as long as the qualified
 13 affordable housing project continues to offer some of the
 14 residential rental units purchased as rent restricted units in
 15 accordance with the operation agreement.

16 (9) For purposes of subsections (6), (7), and (8) and this
 17 subsection:

18 (a) "Limited dividend housing association" means a limited
 19 dividend housing association, corporation, or cooperative organized
 20 and qualified pursuant to chapter 7 of the state housing
 21 development authority act of 1966, 1966 PA 346, MCL 125.1491 to
 22 125.1496.

23 (b) "Qualified affordable housing project" means a person that
 24 is organized, qualified, and operated as a limited dividend housing
 25 association that has a limitation on the amount of dividends or
 26 other distributions that may be distributed to its owners in any
 27 given year and has received funding, subsidies, grants, operating

1 support, or construction or permanent funding through 1 or more of
2 the following sources and programs:

3 (i) Mortgage or other financing provided by the Michigan state
4 housing development authority created in section 21 of the state
5 housing development authority act of 1966, 1966 PA 346, MCL
6 125.1421, the United States department of housing and urban
7 development, the United States department of agriculture for rural
8 housing service, the Michigan interfaith housing trust fund,
9 Michigan housing and community development fund, federal home loan
10 bank, housing commission loan, community development financial
11 institution, or mortgage or other funding or guaranteed by Fannie,
12 Ginnie, federal housing association, United States department of
13 agriculture, or federal home loan mortgage corporation.

14 (ii) A tax-exempt bond issued by a nonprofit organization,
15 local governmental unit, or other authority.

16 (iii) A payment in lieu of tax agreement or other tax abatement.

17 (iv) Funding from the state or a local governmental unit
18 through a HOME investments partnership program authorized under 42
19 USC 12741 to 12756.

20 (v) A grant or other funding from a federal home loan bank's
21 affordable housing program.

22 (vi) Financing or funding under the new markets tax credit
23 program under section 45D of the internal revenue code.

24 (vii) Financed in whole or in part under the United States
25 department of housing and urban development's hope VI program as
26 authorized by section 803 of the national affordable housing act,
27 42 USC 8012.

1 (viii) Financed in whole or in part under the United States
2 department of housing and urban development's section 202 program
3 authorized by section 202 of the national housing act, 12 USC
4 1701q.

5 (ix) Financing or funding under the low-income housing tax
6 credit program under section 42 of the internal revenue code.

7 (x) Financing or other subsidies from any new programs similar
8 to any of the above.

9 (c) "Rent restricted unit" means any residential rental unit's
10 rental income is restricted in accordance with section 42(g)(1) of
11 the internal revenue code as if it was a qualified low-income
12 housing project, or receives rental assistance in the form of HUD
13 section 8 subsidies or HUD housing assistance program subsidies, or
14 rental assistance from the United States department of agriculture
15 rural housing programs, or from any of the other programs described
16 under subdivision (b).