

SENATE BILL No. 219

February 12, 2009, Introduced by Senators PAPPAGEORGE, CROPSEY, KUIPERS and RICHARDVILLE and referred to the Committee on Finance.

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)

1 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 **(iv) THE RELATED PERSON RECIPIENT OF THE TRANSACTION IS**
17 **ORGANIZED UNDER THE LAWS OF A FOREIGN NATION WHICH HAS IN FORCE A**
18 **COMPREHENSIVE INCOME TAX TREATY WITH THE UNITED STATES.**

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

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

27 (i) Subject to the limitation provided under this subdivision,

1 if the book-tax differences for the first fiscal period ending
2 after July 12, 2007 result in a deferred liability for a person
3 subject to tax under this act, deduct the following percentages of
4 the total book-tax difference for each qualifying asset, for each
5 of the successive 15 tax years beginning with the 2015 tax year:

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

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

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

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

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

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

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

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

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

1 successively to the next 9 taxable years following the loss year or
2 until the loss is used up, whichever occurs first, but for not more
3 than 10 taxable years after the loss year.

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

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

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

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

5 (8) If a qualified affordable housing project no longer meets
6 the requirements of subsection (9)(b) or fails to operate those
7 residential rental units as rent restricted units in accordance
8 with the operation agreement and the requirements of subsection
9 (9)(c), the taxpayer is entitled to the deductions under
10 subsections (6) and (7) as long as the qualified affordable housing
11 project continues to offer some of the residential rental units
12 purchased as rent restricted units in accordance with the operation
13 agreement.

14 (9) For purposes of subsections (6), (7), and (8) and this
15 subsection:

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

21 (b) "Qualified affordable housing project" means a person that
22 is organized, qualified, and operated as a limited dividend housing
23 association that has a limitation on the amount of dividends or
24 other distributions that may be distributed to its owners in any
25 given year and has received funding, subsidies, grants, operating
26 support, or construction or permanent funding through 1 or more of
27 the following sources and programs:

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

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

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

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

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

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

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

26 (viii) Financed in whole or in part under the United States
27 department of housing and urban development's section 202 program

1 authorized by section 202 of the national housing act, 12 USC
2 1701q.

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

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

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