HOUSE BILL No. 4629

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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:

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

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(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%.

(J) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2008, TO THE EXTENT INCLUDED IN FEDERAL TAXABLE INCOME, 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

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) For purposes of 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) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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