

# SENATE BILL No. 832

September 17, 2009, Introduced by Senator GILBERT 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 (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 **(J) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2008, TO THE**  
7 **EXTENT INCLUDED IN FEDERAL TAXABLE INCOME, DEDUCT THE AMOUNT OF A**  
8 **CHARITABLE CONTRIBUTION MADE TO THE ADVANCE TUITION PAYMENT FUND**  
9 **CREATED UNDER SECTION 9 OF THE MICHIGAN EDUCATION TRUST ACT, 1986**  
10 **PA 316, MCL 390.1429.**

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

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

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

14 (b) "Qualifying asset" means any asset shown on the person's  
15 books and records for the first fiscal period ending after July 12,  
16 2007, in accordance with generally accepted accounting principles.

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

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

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

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

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

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



1 given year and has received funding, subsidies, grants, operating  
2 support, or construction or permanent funding through 1 or more of  
3 the following sources and programs:

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

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

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

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

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

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

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

1 42 USC 8012.

2 (viii) Financed in whole or in part under the United States  
3 department of housing and urban development's section 202 program  
4 authorized by section 202 of the national housing act, 12 USC  
5 1701q.

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

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

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