

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1104

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 703 (MCL 206.703), as amended by 2011 PA 188.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 703. (1) A person who disburses pension or annuity
2 payments, except as otherwise provided under this section, shall
3 withhold a tax in an amount computed by applying the rate
4 prescribed in section 51 on the taxable part of payments from an
5 employer pension, annuity, profit-sharing, stock bonus, or other
6 deferred compensation plan as well as from an individual retirement
7 arrangement, an annuity, an endowment, or a life insurance contract
8 issued by a life insurance company. Withholding shall be calculated
9 on the taxable disbursement after deducting from the taxable

1 portion the same proportion of the total amount of personal and
2 dependency exemptions of the individual allowed under this act.
3 Withholding is not required on any part of a distribution that is
4 not expected to be includable in the recipient's gross income or
5 that is deductible from adjusted gross income under section
6 30(1)(e) or (f).

7 (2) Every employer in this state required under the provisions
8 of the internal revenue code to withhold a tax on the compensation
9 of an individual, except as otherwise provided, shall deduct and
10 withhold a tax in an amount computed by applying, except as
11 provided by subsection (14), the rate prescribed in section 51 to
12 the remainder of the compensation after deducting from compensation
13 the same proportion of the total amount of personal and dependency
14 exemptions of the individual allowed under this act that the period
15 of time covered by the compensation is of 1 year. The department
16 may prescribe withholding tables that may be used by employers to
17 compute the amount of tax required to be withheld.

18 (3) ~~Every~~ **EXCEPT AS OTHERWISE PROVIDED UNDER THIS SECTION,**
19 **EVERY** flow-through entity in this state shall withhold a tax in an
20 amount computed by applying the rate prescribed in section 51 to
21 the distributive share of taxable income reasonably expected to
22 accrue after allocation and apportionment under chapter 3 of each
23 nonresident member who is an individual after deducting from that
24 distributive income the same proportion of the total amount of
25 personal and dependency exemptions of the individual allowed under
26 this act. All of the taxes withheld under this section shall accrue
27 to the state on April 15, ~~June~~ **JULY** 15, and ~~September~~ **OCTOBER** 15 of

1 the flow-through entity's tax year and January 15 of the following
2 year, except a flow-through entity that is not on a calendar year
3 basis shall substitute the appropriate due dates in the flow-
4 through entity's fiscal year that correspond to those in a calendar
5 year. Withholding for each period shall be equal to 1/4 of the
6 total withholding calculated on the distributive share that is
7 reasonably expected to accrue during the tax year of the flow-
8 through entity.

9 (4) ~~Every~~ **EXCEPT AS OTHERWISE PROVIDED UNDER THIS SECTION,**
10 **EVERY** flow-through entity with business activity in this state that
11 has more than \$200,000.00 of business income reasonably expected to
12 accrue in the tax year after allocation or apportionment ~~under~~
13 ~~chapter 14~~ shall withhold a tax in an amount computed by applying
14 the rate prescribed in section 623 to the distributive share of the
15 business income of each member that is a corporation or that is a
16 flow-through entity. **FOR PURPOSES OF CALCULATING THE \$200,000.00**
17 **WITHHOLDING THRESHOLD, THE BUSINESS INCOME OF A FLOW-THROUGH ENTITY**
18 **SHALL BE APPORTIONED TO THIS STATE BY MULTIPLYING THE BUSINESS**
19 **INCOME BY THE SALES FACTOR OF THE FLOW-THROUGH ENTITY. THE SALES**
20 **FACTOR OF THE FLOW-THROUGH ENTITY IS A FRACTION, THE NUMERATOR OF**
21 **WHICH IS THE TOTAL SALES OF THE FLOW-THROUGH ENTITY IN THIS STATE**
22 **DURING THE TAX YEAR AND THE DENOMINATOR OF WHICH IS THE TOTAL SALES**
23 **OF THE FLOW-THROUGH ENTITY EVERYWHERE DURING THE TAX YEAR.** As used
24 in this subsection, "business income" means that term as defined in
25 section 603(2). For a partnership or S corporation, business income
26 includes payments and items of income and expense that are
27 attributable to business activity of the partnership or S

1 corporation and separately reported to the members. **AS USED IN THIS**
2 **SUBSECTION, "SALES" MEANS THAT TERM AS DEFINED IN SECTION 609 AND**
3 **SALES IN THIS STATE IS DETERMINED AS PROVIDED IN SECTIONS 665 AND**
4 **669.** All of the taxes withheld under this section shall accrue to
5 the state on April 15, ~~June~~**JULY** 15, and ~~September~~**OCTOBER** 15 of
6 the flow-through entity's tax year and January 15 of the following
7 year, except a flow-through entity that is not on a calendar year
8 basis shall substitute the appropriate due dates in the flow-
9 through entity's fiscal year that correspond to those in a calendar
10 year. Withholding for each period shall be equal to 1/4 of the
11 total withholding calculated on the distributive share of business
12 income that is reasonably expected to accrue during the tax year of
13 the flow-through entity.

14 (5) If a flow-through entity is subject to the withholding
15 requirements of subsection (4), then a member of that flow-through
16 entity that is itself a flow-through entity shall withhold a tax on
17 the distributive share of business income as described in
18 subsection (4) of each of its members. The department shall apply
19 tax withheld by a flow-through entity on the distributive share of
20 business income of a member flow-through entity to the withholding
21 required of that member flow-through entity. All of the taxes
22 withheld under this section shall accrue to the state on April 15,
23 ~~June~~**JULY** 15, and ~~September~~**OCTOBER** 15 of the flow-through entity's
24 tax year and January 15 of the following year, except a flow-
25 through entity that is not on a calendar year basis shall
26 substitute the appropriate due dates in the flow-through entity's
27 fiscal year that correspond to those in a calendar year.

1 Withholding for each period shall be equal to 1/4 of the total
2 withholding calculated on the distributive share of business income
3 that is reasonably expected to accrue during the tax year of the
4 flow-through entity.

5 (6) Every casino licensee shall withhold a tax in an amount
6 computed by applying the rate prescribed in section 51 to the
7 winnings of a nonresident reportable by the casino licensee under
8 the internal revenue code.

9 (7) Every race meeting licensee or track licensee shall
10 withhold a tax in an amount computed by applying the rate
11 prescribed in section 51 to a payoff price on a winning ticket of a
12 nonresident reportable by the race meeting licensee or track
13 licensee under the internal revenue code that is the result of
14 pari-mutuel wagering at a licensed race meeting.

15 (8) Every casino licensee or race meeting licensee or track
16 licensee shall report winnings of a resident reportable by the
17 casino licensee or race meeting licensee or track licensee under
18 the internal revenue code to the department in the same manner and
19 format as required under the internal revenue code.

20 (9) Every eligible production company shall, to the extent not
21 withheld by a professional services corporation or professional
22 employer organization, deduct and withhold a tax in an amount
23 computed by applying the rate prescribed in section 51 to the
24 remainder of the payments made to the professional services
25 corporation or professional employer organization for the services
26 of a performing artist or crew member after deducting from those
27 payments the same proportion of the total amount of personal and

1 dependency exemptions of the individuals allowed under this part.

2 (10) Every publicly traded partnership that has equity
3 securities registered with the securities and exchange commission
4 under section 12 of title I of the securities and exchange act of
5 1934, 15 USC 781, shall not be subject to withholding.

6 (11) Except as otherwise provided under this subsection, all
7 of the taxes withheld under this section shall accrue to the state
8 on the last day of the month in which the taxes are withheld but
9 shall be returned and paid to the department by the employer,
10 eligible production company, casino licensee, or race meeting
11 licensee or track licensee within 15 days after the end of any
12 month or as provided in section 705. For an employer or flow-
13 through entity that has entered into an agreement with a community
14 college pursuant to chapter 13 of the community college act of
15 1966, 1966 PA 331, MCL 389.161 to 389.166, a portion of the taxes
16 withheld under this section that are attributable to each employee
17 in a new job created pursuant to the agreement shall accrue to the
18 community college on the last day of the month in which the taxes
19 are withheld but shall be returned and paid to the community
20 college by the employer or flow-through entity within 15 days after
21 the end of any month or as provided in section 705 for as long as
22 the agreement remains in effect. For purposes of this act and 1941
23 PA 122, MCL 205.1 to 205.31, payments made by an employer or flow-
24 through entity to a community college under this subsection shall
25 be considered income taxes paid to this state.

26 (12) A person required by this section to deduct and withhold
27 taxes on compensation, a share of income available for distribution

1 on which withholding is required under subsection (3), (4), or (5),
2 winnings on which withholding is required under subsection (6), or
3 a payoff price on which withholding is required under subsection
4 (7) holds the amount of tax withheld as a trustee for this state
5 and is liable for the payment of the tax to this state or, if
6 applicable, to the community college and is not liable to any
7 individual for the amount of the payment.

8 (13) An employer in this state is not required to deduct and
9 withhold a tax on the compensation paid to a nonresident individual
10 employee, who, under section 256, may claim a tax credit equal to
11 or in excess of the tax estimated to be due for the tax year or is
12 exempted from liability for the tax imposed by this act. In each
13 tax year, the nonresident individual shall furnish to the employer,
14 on a form approved by the department, a verified statement of
15 nonresidence.

16 (14) A person required to withhold a tax under this act, by
17 the fifteenth day of the following month, shall provide the
18 department with a copy of any exemption certificate on which the
19 employee, member, or person subject to withholding under subsection
20 (6) or (7) claims more than 9 personal or dependency exemptions,
21 claims a status that exempts the employee, member, or person
22 subject to withholding under subsection (6) or (7) from withholding
23 under this section.

24 (15) A PERSON WHO DISBURSES ANNUITY PAYMENTS PURSUANT TO THE
25 TERMS OF A QUALIFIED CHARITABLE GIFT ANNUITY IS NOT REQUIRED TO
26 DEDUCT AND WITHHOLD A TAX ON THOSE PAYMENTS AS PRESCRIBED UNDER
27 SUBSECTION (1). AS USED IN THIS SUBSECTION, "QUALIFIED CHARITABLE

1 GIFT ANNUITY" MEANS AN ANNUITY DESCRIBED UNDER SECTION 501(M) (5) OF
2 THE INTERNAL REVENUE CODE AND ISSUED BY AN ORGANIZATION EXEMPT
3 UNDER SECTION 501(C) (3) OF THE INTERNAL REVENUE CODE.

4 (16) NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTIONS (4) AND
5 (5), IF A FLOW-THROUGH ENTITY RECEIVES AN EXEMPTION CERTIFICATE
6 FROM A CORPORATION, THE FLOW-THROUGH ENTITY SHALL NOT WITHHOLD A
7 TAX ON THE DISTRIBUTIVE SHARE OF THE BUSINESS INCOME OF THAT
8 CORPORATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

9 (A) THE EXEMPTION CERTIFICATE IS COMPLETED BY THE CORPORATION
10 IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT AND CERTIFIES
11 THAT THE CORPORATION WILL DO ALL OF THE FOLLOWING:

12 (i) FILE THE RETURNS REQUIRED UNDER PART 2.

13 (ii) PAY THE TAX REQUIRED UNDER PART 2 ON THE DISTRIBUTIVE
14 SHARE OF THE BUSINESS INCOME RECEIVED FROM ANY FLOW-THROUGH ENTITY
15 IN WHICH THE CORPORATION IS A MEMBER OR IN WHICH THE CORPORATION
16 HAS AN OWNERSHIP OR BENEFICIAL INTEREST, DIRECTLY OR INDIRECTLY
17 THROUGH 1 OR MORE OTHER FLOW-THROUGH ENTITIES.

18 (iii) SUBMIT TO THE TAXING JURISDICTION OF THIS STATE FOR
19 PURPOSES OF COLLECTION OF THE TAX UNDER PART 2 TOGETHER WITH
20 RELATED INTEREST AND PENALTIES UNDER 1941 PA 122, MCL 205.1 TO
21 205.31, IMPOSED ON THE CORPORATION WITH RESPECT TO THE DISTRIBUTIVE
22 SHARE OF THE BUSINESS INCOME OF THAT CORPORATION.

23 (B) THE CORPORATION SHALL FILE THE EXEMPTION CERTIFICATE WITH
24 THE DEPARTMENT AND PROVIDE A COPY TO THE FLOW-THROUGH ENTITY.

25 (C) A FLOW-THROUGH ENTITY THAT RECEIVES AN EXEMPTION
26 CERTIFICATE SHALL ATTACH A COPY OF THE EXEMPTION CERTIFICATE TO THE
27 ANNUAL RECONCILIATION RETURN AS REQUIRED BY SECTION 711. A FLOW-

1 THROUGH ENTITY THAT IS ENTIRELY EXEMPT FROM THE WITHHOLDING
2 REQUIREMENTS OF SUBSECTION (4) OR (5) BY THIS SUBSECTION SHALL
3 FURNISH A COPY OF THE EXEMPTION CERTIFICATE IN A MANNER PRESCRIBED
4 BY THE DEPARTMENT.

5 (D) A COPY OF THE EXEMPTION CERTIFICATE SHALL BE RETAINED BY
6 THE CORPORATION AND FLOW-THROUGH ENTITY AND MADE AVAILABLE TO THE
7 DEPARTMENT UPON REQUEST. ANY COPY OF THE EXEMPTION CERTIFICATE
8 SHALL BE MAINTAINED IN A FORMAT AND FOR THE PERIOD REQUIRED BY 1941
9 PA 122, MCL 205.1 TO 205.31.

10 (17) THE DEPARTMENT MAY REVOKE THE ELECTION PROVIDED FOR IN
11 SUBSECTION (16) IF IT DETERMINES THAT THE CORPORATION OR A FLOW-
12 THROUGH ENTITY IS NOT ABIDING BY THE TERMS OF THE EXEMPTION
13 CERTIFICATE OR THE REQUIREMENTS OF SUBSECTION (16). IF THE
14 DEPARTMENT DOES REVOKE THE ELECTION OPTION UNDER SUBSECTION (16),
15 THE DEPARTMENT SHALL NOTIFY THE AFFECTED FLOW-THROUGH ENTITIES THAT
16 WITHHOLDING IS REQUIRED ON THE CORPORATION UNDER SUBSECTION (4) OR
17 (5), BEGINNING 60 DAYS AFTER NOTICE OF REVOCATION IS RECEIVED.

18 (18) NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTIONS (4) AND
19 (5), A FLOW-THROUGH ENTITY IS NOT REQUIRED TO WITHHOLD IN
20 ACCORDANCE WITH THIS SECTION FOR A MEMBER THAT VOLUNTARILY ELECTS
21 TO FILE A RETURN AND PAY THE TAX IMPOSED BY THE MICHIGAN BUSINESS
22 TAX ACT UNDER SECTION 680 OR SECTION 500 OF THE MICHIGAN BUSINESS
23 TAX ACT, 2007 PA 36, MCL 208.1500.