

HOUSE BILL No. 4959

September 13, 2011, Introduced by Rep. Walsh and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 703 (MCL 206.703), as added by 2011 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 703. (1) A person who disburses pension or annuity
2 payments, ~~is subject to income tax withholding~~ **EXCEPT AS OTHERWISE**
3 **PROVIDED UNDER THIS SECTION, SHALL WITHHOLD A TAX IN AN AMOUNT**
4 **COMPUTED BY APPLYING THE RATE PRESCRIBED IN SECTION 51** on the
5 taxable part of payments from an employer pension, annuity, profit-
6 sharing, stock bonus, or other deferred compensation plan as well
7 as from an individual retirement arrangement, an annuity, an
8 endowment, or a life insurance contract issued by a life insurance
9 company. **WITHHOLDING SHALL BE CALCULATED ON THE TAXABLE**

1 **DISBURSEMENT AFTER DEDUCTING FROM THE TAXABLE PORTION THE SAME**
2 **PROPORTION OF THE TOTAL AMOUNT OF PERSONAL AND DEPENDENCY**
3 **EXEMPTIONS OF THE INDIVIDUAL ALLOWED UNDER THIS ACT.** Withholding is
4 not required on any part of a distribution that is not expected to
5 be includable in the recipient's gross income **OR THAT IS DEDUCTIBLE**
6 **FROM ADJUSTED GROSS INCOME UNDER SECTION 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 ~~(13)~~, **(14)**, the rate prescribed in section
12 51 to the remainder of the compensation after deducting from
13 compensation the same proportion of the total amount of personal
14 and dependency exemptions of the individual allowed under this act
15 that the period of time covered by the compensation is of 1 year.
16 The department may prescribe withholding tables that may be used by
17 employers to compute the amount of tax required to be withheld.

18 (3) Every flow-through entity in this state shall withhold a
19 tax in an amount computed by applying the rate prescribed in
20 section 51 to the distributive share of taxable income **REASONABLY**
21 **EXPECTED TO ACCRUE** after allocation and apportionment under chapter
22 3 of each nonresident member who is an individual after deducting
23 from that distributive income the same proportion of the total
24 amount of personal and dependency exemptions of the individual
25 allowed under this act. **ALL OF THE TAXES WITHHELD UNDER THIS**
26 **SECTION SHALL ACCRUE TO THE STATE ON APRIL 15, JUNE 15, AND**
27 **SEPTEMBER 15 OF THE FLOW-THROUGH ENTITY'S TAX YEAR AND JANUARY 15**

1 OF THE FOLLOWING YEAR, EXCEPT A FLOW-THROUGH ENTITY THAT IS NOT ON
2 A CALENDAR YEAR BASIS SHALL SUBSTITUTE THE APPROPRIATE DUE DATES IN
3 THE FLOW-THROUGH ENTITY'S FISCAL YEAR THAT CORRESPOND TO THOSE IN A
4 CALENDAR YEAR. WITHHOLDING FOR EACH PERIOD SHALL BE EQUAL TO 1/4 OF
5 THE TOTAL WITHHOLDING CALCULATED ON THE DISTRIBUTIVE SHARE THAT IS
6 REASONABLE EXPECTED TO ACCRUE DURING THE TAX YEAR OF THE FLOW-
7 THROUGH ENTITY.

8 (4) Every flow-through entity with business activity in this
9 state that has more than \$200,000.00 of business income **REASONABLY**
10 **EXPECTED TO ACCRUE** in the tax year after allocation or
11 apportionment under chapter 14 shall withhold a tax in an amount
12 computed by applying the rate prescribed in section 623 to the
13 distributive share of the business income of each member that is a
14 corporation or that is a flow-through entity. As used in this
15 subsection, "business income" means that term as defined in section
16 603(2). **FOR A PARTNERSHIP OR S CORPORATION, BUSINESS INCOME**
17 **INCLUDES PAYMENTS AND ITEMS OF INCOME AND EXPENSE THAT ARE**
18 **ATTRIBUTABLE TO BUSINESS ACTIVITY OF THE PARTNERSHIP OR S**
19 **CORPORATION AND SEPARATELY REPORTED TO THE MEMBERS. ALL OF THE**
20 **TAXES WITHHELD UNDER THIS SECTION SHALL ACCRUE TO THE STATE ON**
21 **APRIL 15, JUNE 15, AND SEPTEMBER 15 OF THE FLOW-THROUGH ENTITY'S**
22 **TAX YEAR AND JANUARY 15 OF THE FOLLOWING YEAR, EXCEPT A FLOW-**
23 **THROUGH ENTITY THAT IS NOT ON A CALENDAR YEAR BASIS SHALL**
24 **SUBSTITUTE THE APPROPRIATE DUE DATES IN THE FLOW-THROUGH ENTITY'S**
25 **FISCAL YEAR THAT CORRESPOND TO THOSE IN A CALENDAR YEAR.**
26 **WITHHOLDING FOR EACH PERIOD SHALL BE EQUAL TO 1/4 OF THE TOTAL**
27 **WITHHOLDING CALCULATED ON THE DISTRIBUTIVE SHARE OF BUSINESS INCOME**

1 THAT IS REASONABLY EXPECTED TO ACCRUE DURING THE TAX YEAR OF THE
2 FLOW-THROUGH ENTITY.

3 (5) If a flow-through entity is subject to the withholding
4 requirements of subsection (4), then a member of that flow-through
5 entity that is itself a flow-through entity shall withhold a tax on
6 the distributive share of business income as described in
7 subsection (4) of each of its members. The department shall apply
8 tax withheld by a flow-through entity on the distributive share of
9 business income of a member flow-through entity to the withholding
10 required of that member flow-through entity. **ALL OF THE TAXES**
11 **WITHHELD UNDER THIS SECTION SHALL ACCRUE TO THE STATE ON APRIL 15,**
12 **JUNE 15, AND SEPTEMBER 15 OF THE FLOW-THROUGH ENTITY'S TAX YEAR AND**
13 **JANUARY 15 OF THE FOLLOWING YEAR, EXCEPT A FLOW-THROUGH ENTITY THAT**
14 **IS NOT ON A CALENDAR YEAR BASIS SHALL SUBSTITUTE THE APPROPRIATE**
15 **DUE DATES IN THE FLOW-THROUGH ENTITY'S FISCAL YEAR THAT CORRESPOND**
16 **TO THOSE IN A CALENDAR YEAR. WITHHOLDING FOR EACH PERIOD SHALL BE**
17 **EQUAL TO 1/4 OF THE TOTAL WITHHOLDING CALCULATED ON THE**
18 **DISTRIBUTIVE SHARE OF BUSINESS INCOME THAT IS REASONABLY EXPECTED**
19 **TO ACCRUE DURING THE TAX YEAR OF THE FLOW-THROUGH ENTITY.**

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

24 (7) Every race meeting licensee or track licensee shall
25 withhold a tax in an amount computed by applying the rate
26 prescribed in section 51 to a payoff price on a winning ticket of a
27 nonresident reportable by the race meeting licensee or track

1 licensee under the internal revenue code that is the result of
2 pari-mutuel wagering at a licensed race meeting.

3 (8) Every casino licensee or race meeting licensee or track
4 licensee shall report winnings of a resident reportable by the
5 casino licensee or race meeting licensee or track licensee under
6 the internal revenue code to the department in the same manner and
7 format as required under the internal revenue code.

8 (9) Every eligible production company shall, to the extent not
9 withheld by a professional services corporation or professional
10 employer organization, deduct and withhold a tax in an amount
11 computed by applying the rate prescribed in section 51 to the
12 remainder of the payments made to the professional services
13 corporation or professional employer organization for the services
14 of a performing artist or crew member after deducting from those
15 payments the same proportion of the total amount of personal and
16 dependency exemptions of the individuals allowed under this part.

17 **(10) EVERY PUBLICLY TRADED PARTNERSHIP THAT HAS EQUITY**
18 **SECURITIES REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION**
19 **UNDER SECTION 12 OF TITLE I OF THE SECURITIES AND EXCHANGE ACT OF**
20 **1934, 15 USC 78L, SHALL NOT BE SUBJECT TO WITHHOLDING.**

21 (11) ~~(10)~~ Except as otherwise provided under this subsection,
22 all of the taxes withheld under this section shall accrue to the
23 state on the last day of the month in which the taxes are withheld
24 but shall be returned and paid to the department by the employer,
25 ~~flow through entity,~~ eligible production company, casino licensee,
26 or race meeting licensee or track licensee within 15 days after the
27 end of any month or as provided in section ~~355.~~ **705.** For an

1 employer or flow-through entity that has entered into an agreement
 2 with a community college pursuant to chapter 13 of the community
 3 college act of 1966, 1966 PA 331, MCL 389.161 to 389.166, a portion
 4 of the taxes withheld under this section that are attributable to
 5 each employee in a new job created pursuant to the agreement shall
 6 accrue to the community college on the last day of the month in
 7 which the taxes are withheld but shall be returned and paid to the
 8 community college by the employer or flow-through entity within 15
 9 days after the end of any month or as provided in section ~~355-705~~
 10 for as long as the agreement remains in effect. For purposes of
 11 this act and 1941 PA 122, MCL 205.1 to 205.31, payments made by an
 12 employer or flow-through entity to a community college under this
 13 subsection shall be considered income taxes paid to this state.

14 (12) ~~(11) An employer, flow through entity, eligible~~
 15 ~~production company, casino licensee, or race meeting licensee or~~
 16 ~~track licensee~~ **A PERSON** required by this section to deduct and
 17 withhold taxes on compensation, a share of income available for
 18 distribution on which withholding is required under subsection (3),
 19 (4), or (5), winnings on which withholding is required under
 20 subsection (6), or a payoff price on which withholding is required
 21 under subsection (7) holds the amount of tax withheld as a trustee
 22 for this state and is liable for the payment of the tax to this
 23 state or, if applicable, to the community college and is not liable
 24 to any individual for the amount of the payment.

25 (13) ~~(12)~~ An employer in this state is not required to deduct
 26 and withhold a tax on the compensation paid to a nonresident
 27 individual employee, who, under section 256, may claim a tax credit

equal to or in excess of the tax estimated to be due for the tax year or is exempted from liability for the tax imposed by this act. In each tax year, the nonresident individual shall furnish to the employer, on a form approved by the department, a verified statement of nonresidence.

~~(14) (13) An employer, flow-through entity, eligible production company, casino licensee, or race meeting licensee or track licensee~~ **A PERSON** required to withhold a tax under this act, by the fifteenth day of the following month, shall provide the department with a copy of any exemption certificate on which the employee, member, or person subject to withholding under subsection (6) or (7) claims more than 9 personal or dependency exemptions, claims a status that exempts the employee, member, or person subject to withholding under subsection (6) or (7) from withholding under this section. ~~, or elects to pay the tax imposed by this part calculated under section 51a.~~

~~—— (14) An employer shall deduct and withhold the tax imposed by this act calculated under section 51a for a resident who files an exemption certificate under subsection (13) to elect to pay the tax calculated under section 51a.~~

~~—— (15) The exemption certificate required by this section shall include the following statement, "Electing to file using the no-form option may not be for everyone who is eligible. If a taxpayer chooses the no form option, he or she may not be eligible for some of the credits allowed under this act including the property tax credit allowed under sections 520 and 522."~~

Enacting section 1. This amendatory act takes effect January

1 1, 2012.