

SENATE BILL No. 1298

September 20, 2012, Introduced by Senators BRANDENBURG and JANSEN and referred to the Committee on Finance.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 703 (MCL 206.703), as amended by 2012 PA 217.

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
10 portion the same proportion of the total amount of personal and

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

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

17 (3) Except as otherwise provided under this section, every
18 flow-through entity in this state shall withhold a tax in an amount
19 computed by applying the rate prescribed in section 51 to the
20 distributive share of taxable income reasonably expected to accrue
21 after allocation and apportionment under chapter 3 of each
22 nonresident member who is an individual after deducting from that
23 distributive income the same proportion of the total amount of
24 personal and dependency exemptions of the individual allowed under
25 this act. All of the taxes withheld under this section shall accrue
26 to the state on April 15, July 15, and October 15 of the flow-
27 through entity's tax year and January 15 of the following year,

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

7 (4) Except as otherwise provided under this section, every
8 flow-through entity with business activity in this state that has
9 more than \$200,000.00 of business income reasonably expected to
10 accrue in the tax year after allocation or apportionment shall
11 withhold a tax in an amount computed by applying the rate
12 prescribed in section 623 to the distributive share of the business
13 income of each member that is a corporation or that is a flow-
14 through entity. For purposes of calculating the \$200,000.00
15 withholding threshold, the business income of a flow-through entity
16 shall be apportioned to this state by multiplying the business
17 income by the sales factor of the flow-through entity. The sales
18 factor of the flow-through entity is a fraction, the numerator of
19 which is the total sales of the flow-through entity in this state
20 during the tax year and the denominator of which is the total sales
21 of the flow-through entity everywhere during the tax year. As used
22 in this subsection, "business income" means that term as defined in
23 section 603(2). For a partnership or S corporation, business income
24 includes payments and items of income and expense that are
25 attributable to business activity of the partnership or S
26 corporation and separately reported to the members. As used in this
27 subsection, "sales" means that term as defined in section 609 and

1 sales in this state is determined as provided in sections 665 and
2 669. All of the taxes withheld under this section shall accrue to
3 the state on April 15, July 15, and October 15 of the flow-through
4 entity's tax year and January 15 of the following year, except a
5 flow-through entity that is not on a calendar year basis shall
6 substitute the appropriate due dates in the flow-through entity's
7 fiscal year that correspond to those in a calendar year.

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

12 (5) If a flow-through entity is subject to the withholding
13 requirements of subsection (4), then a member of that flow-through
14 entity that is itself a flow-through entity shall withhold a tax on
15 the distributive share of business income as described in
16 subsection (4) of each of its members. The department shall apply
17 tax withheld by a flow-through entity on the distributive share of
18 business income of a member flow-through entity to the withholding
19 required of that member flow-through entity. All of the taxes
20 withheld under this section shall accrue to the state on April 15,
21 July 15, and October 15 of the flow-through entity's tax year and
22 January 15 of the following year, except a flow-through entity that
23 is not on a calendar year basis shall substitute the appropriate
24 due dates in the flow-through entity's fiscal year that correspond
25 to those in a calendar year. Withholding for each period shall be
26 equal to 1/4 of the total withholding calculated on the
27 distributive share of business income that is reasonably expected

1 to accrue during the tax year of the flow-through entity.

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

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

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

17 (9) Every eligible production company shall, to the extent not
18 withheld by a professional services corporation or professional
19 employer organization, deduct and withhold a tax in an amount
20 computed by applying the rate prescribed in section 51 to the
21 remainder of the payments made to the professional services
22 corporation or professional employer organization for the services
23 of a performing artist or crew member after deducting from those
24 payments the same proportion of the total amount of personal and
25 dependency exemptions of the individuals allowed under this
26 ~~part~~. **ACT.**

27 (10) Every publicly traded partnership that has equity

1 securities registered with the securities and exchange commission
2 under section 12 of title I of the securities and exchange act of
3 1934, 15 USC 78l, shall not be subject to withholding.

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

24 (12) A person required by this section to deduct and withhold
25 taxes on compensation, a share of income available for distribution
26 on which withholding is required under subsection (3), (4), or (5),
27 winnings on which withholding is required under subsection (6), or

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

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

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

22 (15) A person who disburses annuity payments pursuant to the
23 terms of a qualified charitable gift annuity is not required to
24 deduct and withhold a tax on those payments as prescribed under
25 subsection (1). As used in this subsection, "qualified charitable
26 gift annuity" means an annuity described under section 501(m)(5) of
27 the internal revenue code and issued by an organization exempt

1 under section 501(c)(3) of the internal revenue code.

2 (16) Notwithstanding the requirements of subsections (4) and
3 (5), if a flow-through entity receives an exemption certificate
4 from a ~~corporation~~, **MEMBER OTHER THAN A NONRESIDENT INDIVIDUAL**, the
5 flow-through entity shall not withhold a tax on the distributive
6 share of the business income of that ~~corporation~~ **MEMBER** if all of
7 the following conditions are met:

8 (a) The exemption certificate is completed by the ~~corporation~~
9 **MEMBER** in the form and manner prescribed by the department and
10 certifies that the ~~corporation~~ **MEMBER** will do all of the following:

11 (i) File the returns required under ~~part 2~~ **THIS ACT**.

12 (ii) Pay **OR WITHHOLD** the tax required under ~~part 2~~ **THIS ACT** on
13 the distributive share of the business income received from any
14 flow-through entity in which the ~~corporation is a member or in~~
15 ~~which the corporation~~ **MEMBER** has an ownership or beneficial
16 interest, directly or indirectly through 1 or more other flow-
17 through entities.

18 (iii) Submit to the taxing jurisdiction of this state for
19 purposes of collection of the tax under ~~part 2~~ **THIS ACT** together
20 with related interest and penalties under 1941 PA 122, MCL 205.1 to
21 205.31, imposed on the ~~corporation~~ **MEMBER** with respect to the
22 distributive share of the business income of that
23 ~~corporation~~ **MEMBER**.

24 (b) The ~~corporation~~ **MEMBER** shall file the exemption
25 certificate with the department and provide a copy to the flow-
26 through entity.

27 (c) ~~A~~ **THE DEPARTMENT MAY REQUIRE A** flow-through entity that

1 receives an exemption certificate ~~shall~~**TO** attach a copy of the
2 exemption certificate to the annual reconciliation return as
3 required by section 711. A flow-through entity that is entirely
4 exempt from the withholding requirements of subsection (4) or (5)
5 by this subsection ~~shall~~**MAY BE REQUIRED TO** furnish a copy of the
6 exemption certificate in a ~~an~~**ANOTHER** manner prescribed by the
7 department.

8 (d) A copy of the exemption certificate shall be retained by
9 the ~~corporation~~**MEMBER** and flow-through entity and made available
10 to the department upon request. Any copy of the exemption
11 certificate shall be maintained in a format and for the period
12 required by 1941 PA 122, MCL 205.1 to 205.31.

13 (17) The department may revoke the election provided for in
14 subsection (16) if it determines that the ~~corporation~~**MEMBER** or a
15 flow-through entity is not abiding by the terms of the exemption
16 certificate or the requirements of subsection (16). If the
17 department does revoke the election option under subsection (16),
18 the department shall notify the affected flow-through ~~entities~~
19 **ENTITY** that withholding is required on the ~~corporation~~**MEMBER** under
20 subsection (4) or (5), beginning 60 days after notice of revocation
21 is received.

22 (18) Notwithstanding the requirements of subsections (4) and
23 (5), a flow-through entity is not required to withhold in
24 accordance with this section for a member that voluntarily elects
25 to file a return and pay the tax imposed by the Michigan business
26 tax act under section 680 or section 500 of the Michigan business
27 tax act, 2007 PA 36, MCL 208.1500.

1 Enacting section 1. This amendatory act takes effect January
2 1, 2013 and applies to all business activity occurring after
3 December 31, 2012.