

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 367

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending sections 603, 611, and 691 (MCL 206.603, 206.611, and
206.691), section 603 as amended by 2011 PA 173, section 611 as
amended by 2011 PA 170, and section 691 as amended by 2012 PA 70.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 603. (1) "AFFILIATED GROUP" MEANS THAT TERM AS DEFINED IN
2 SECTION 1504 OF THE INTERNAL REVENUE CODE EXCEPT THAT IT SHALL
3 INCLUDE ALL UNITED STATES PERSONS THAT ARE CORPORATIONS, INSURANCE
4 COMPANIES, OR FINANCIAL INSTITUTIONS, OTHER THAN A FOREIGN
5 OPERATING ENTITY, THAT ARE COMMONLY OWNED, DIRECTLY OR INDIRECTLY,
6 BY ANY MEMBER OF SUCH AFFILIATED GROUP AND OTHER MEMBERS OF WHICH
7 MORE THAN 50% OF THE OWNERSHIP INTERESTS WITH VOTING RIGHTS OR

1 OWNERSHIP INTERESTS THAT CONFER COMPARABLE RIGHTS TO VOTING RIGHTS
2 OF THE MEMBER IS DIRECTLY OR INDIRECTLY OWNED BY A COMMON OWNER OR
3 OWNERS.

4 (2) ~~(1)~~—"Business activity" means a transfer of legal or
5 equitable title to or rental of property, whether real, personal,
6 or mixed, tangible or intangible, or the performance of services,
7 or a combination thereof, made or engaged in, or caused to be made
8 or engaged in, whether in intrastate, interstate, or foreign
9 commerce, with the object of gain, benefit, or advantage, whether
10 direct or indirect, to the taxpayer or to others, but does not
11 include the services rendered by an employee to his or her employer
12 or services as a director of a corporation. Although an activity of
13 a taxpayer may be incidental to another or to others of his or her
14 business activities, each activity shall be considered to be
15 business engaged in within the meaning of this part.

16 (3) ~~(2)~~—"Business income" means federal taxable income. For a
17 tax-exempt taxpayer, business income means only that part of
18 federal taxable income derived from unrelated business activity.

19 Sec. 611. (1) "Tangible personal property" means that term as
20 defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

21 (2) "Tax" means the tax imposed under this part, including
22 interest and penalties under this part, unless the term is given a
23 more limited meaning in the context of this part or a provision of
24 this part.

25 (3) "Tax-exempt person" means an organization that is exempt
26 from federal income tax under section 501(a) of the internal
27 revenue code, except the following:

1 (a) An organization exempt under section 501(c)(12) or (16) of
2 the internal revenue code.

3 (b) An organization exempt under section 501(c)(4) of the
4 internal revenue code that would be exempt under section 501(c)(12)
5 of the internal revenue code but for its failure to meet the
6 requirement in section 501(c)(12) that 85% or more of its income
7 must consist of amounts collected from members.

8 (4) "Tax year" means the calendar year, or the fiscal year
9 ending during the calendar year, upon the basis of which the tax
10 base of a taxpayer is computed under this part. If a return is made
11 for a fractional part of a year, tax year means the period for
12 which the return is made. Except for the first return required by
13 this part, a taxpayer's tax year is for the same period as is
14 covered by its federal income tax return. A taxpayer that has a 52-
15 or 53-week tax year beginning not more than 7 days before the end
16 of any month is considered to have a tax year beginning on the
17 first day of the subsequent month. A person included in a unitary
18 business group that joins or departs the unitary business group
19 other than at the end of that person's federal tax year shall have
20 a tax year beginning with its federal income tax period and ending
21 on the date of joining or departing the unitary business group, and
22 another tax year beginning on the date immediately after joining or
23 departing the unitary business group and ending with its federal
24 income tax period. If the term tax year in this part is used in
25 reference to 1 or more previous or preceding tax years and those
26 referenced tax years are before January 1, 2012, then those
27 referenced tax years are deemed those same tax years during which

former 1975 PA 228 or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, applied.

(5) "Taxpayer" means a corporation, insurance company, financial institution, or unitary business group, whichever is applicable under each chapter, that is liable for a tax, interest, or penalty under this part. For purposes of chapters 11 and 14, taxpayer does not include an insurance company or a financial institution. For purposes of chapter 12, unless specifically included in the section, taxpayer does not include a corporation or a financial institution. For purposes of chapter 13, taxpayer does not include a corporation or an insurance company.

(6) "Unitary business group" means a group of United States persons that are corporations, insurance companies, or financial institutions, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other members, and that has business activities or operations which result in a flow of value between or among members included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. **UNITARY BUSINESS GROUP INCLUDES AN AFFILIATED GROUP THAT MAKES THE ELECTION TO BE TREATED, AND TO FILE, AS A UNITARY BUSINESS GROUP UNDER SECTION 691(2).**

(7) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

(8) "Unrelated business activity" means, for a tax-exempt

1 person, business activity directly connected with an unrelated
2 trade or business as defined in section 513 of the internal revenue
3 code.

4 Sec. 691. (1) Except as otherwise provided under section
5 680(3), a unitary business group shall file a combined return that
6 includes each United States person that is included in the unitary
7 business group. Each United States person included in a unitary
8 business group or included in a combined return shall be treated as
9 a single person, and all transactions between those persons
10 included in the unitary business group shall be eliminated from the
11 corporate income tax base and the apportionment formulas under this
12 part. If a United States person included in a unitary business
13 group or included in a combined return is subject to the tax under
14 chapter 12 or 13, any corporate income attributable to that person
15 shall be eliminated from the corporate income tax base and any
16 sales attributable to that person shall be eliminated from the
17 apportionment formula under this part.

18 (2) A PERSON THAT IS PART OF AN AFFILIATED GROUP MAY ELECT
19 WITHOUT THE CONSENT OF THE DEPARTMENT TO HAVE ALL OF THE PERSONS
20 THAT ARE INCLUDED IN THAT AFFILIATED GROUP TO BE TREATED AS A
21 UNITARY BUSINESS GROUP. A TAXPAYER THAT ELECTS TO FILE AS A UNITARY
22 BUSINESS GROUP PURSUANT TO THIS SUBSECTION SHALL COMPUTE ITS TAX
23 UNDER THIS PART IN ACCORDANCE WITH ALL OTHER PROVISIONS OF THIS
24 PART THAT APPLY TO A UNITARY BUSINESS GROUP. THE TAXPAYER SHALL
25 MAKE THE ELECTION UNDER THIS SUBSECTION ON A FORM OR IN A FORMAT AS
26 PRESCRIBED BY THE DEPARTMENT THAT IS TO BE FILED IN A TIMELY MANNER
27 WITH THE TAXPAYER'S ANNUAL RETURN. EACH PERSON INCLUDED IN THE

1 AFFILIATED GROUP IS DEEMED TO HAVE AGREED TO BE BOUND BY THE
2 ELECTION MADE UNDER THIS SUBSECTION AND ANY RENEWAL OF THAT
3 ELECTION AND TO HAVE WAIVED ANY OBJECTION TO ITS INCLUSION IN THE
4 AFFILIATED GROUP AND TREATMENT AS A UNITARY BUSINESS GROUP. EACH
5 PERSON THAT SUBSEQUENTLY ENTERS THE AFFILIATED GROUP AFTER THE TAX
6 YEAR FOR WHICH THE ELECTION IS MADE IS DEEMED TO HAVE CONSENTED TO
7 THE APPLICATION OF AND IS BOUND BY THE ELECTION AND TO HAVE WAIVED
8 ANY OBJECTION TO ITS INCLUSION IN THE AFFILIATED GROUP AND
9 TREATMENT AS A UNITARY BUSINESS GROUP. AN ELECTION MADE PURSUANT TO
10 THIS SUBSECTION IS IRREVOCABLE AND BINDING FOR AND APPLICABLE TO
11 THE TAX YEAR FOR WHICH IT IS MADE AND FOR THE NEXT 9 TAX YEARS. THE
12 ELECTION SHALL REMAIN IN EFFECT FOR THE TIME PERIOD IN WHICH THE
13 OWNERSHIP REQUIREMENTS UNDER THIS SECTION ARE MET IRRESPECTIVE OF
14 WHETHER A FEDERAL CONSOLIDATED GROUP TO WHICH THE UNITARY BUSINESS
15 GROUP BELONGS DISCONTINUES THE FILING OF A FEDERAL CONSOLIDATED
16 RETURN OR WHETHER THE COMMON PARENT CHANGES DUE TO A REVERSE
17 ACQUISITION OR ACQUISITION BY A RELATED PERSON. UPON THE EXPIRATION
18 OF THE ELECTION AFTER IT HAS BEEN IN EFFECT FOR 10 TAX YEARS, AN
19 ELECTION MAY BE RENEWED FOR ANOTHER 10 TAX YEARS, WITHOUT THE
20 CONSENT OF THE DEPARTMENT; PROVIDED HOWEVER, THAT IN THE CASE OF A
21 NONRENEWAL A NEW ELECTION UNDER THIS SUBSECTION IS NOT PERMITTED IN
22 ANY OF THE IMMEDIATELY FOLLOWING 3 TAX YEARS. THE RENEWAL SHALL BE
23 MADE ON A FORM OR IN A FORMAT AS PRESCRIBED BY THE DEPARTMENT THAT
24 IS TO BE FILED IN A TIMELY MANNER WITH THE TAXPAYER'S ANNUAL RETURN
25 AFTER THE COMPLETION OF A 10-YEAR PERIOD FOR WHICH AN ELECTION
26 UNDER THIS SUBSECTION WAS IN PLACE.

27 Enacting section 1. This amendatory act is effective for tax

1 years that begin after December 31, 2012.