

**SUBSTITUTE FOR
SENATE BILL NO. 234**

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending sections 651, 653, 655, and 657 (MCL 206.651, 206.653,
206.655, and 206.657), section 651 as amended by 2011 PA 171,
section 653 as amended by 2011 PA 183, and sections 655 and 657 as
added by 2011 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 651. As used in this chapter:

2 (a) "Billing address" means the location indicated in the
3 books and records of the financial institution on the first day of
4 the tax year or on a later date in the tax year when the customer
5 relationship began as the address where any notice, statement, or
6 bill relating to a customer's account is mailed.

7 (b) "Borrower is located in this state" or "credit card holder
8 is located in this state" means a borrower, other than a credit

1 card holder, that is engaged in a trade or business which maintains
2 its commercial domicile in this state, or a borrower that is not
3 engaged in a trade or business or a credit card holder whose
4 billing address is in this state.

5 (c) "Commercial domicile" means the headquarters of the trade
6 or business, that is the place from which the trade or business is
7 principally managed and directed, or if a financial institution is
8 organized under the laws of a foreign country, of the Commonwealth
9 of Puerto Rico, or any territory or possession of the United
10 States, such financial institution's commercial domicile shall be
11 deemed for the purposes of this chapter to be the state of the
12 United States or the District of Columbia from which such financial
13 institution's trade or business in the United States is principally
14 managed and directed. It shall be presumed, subject to rebuttal,
15 that the location from which the financial institution's trade or
16 business is principally managed and directed is the state of the
17 United States or the District of Columbia to which the greatest
18 number of employees are regularly connected or out of which they
19 are working, irrespective of where the services of such employees
20 are performed, as of the last day of the tax year.

21 (d) "Credit card" means a credit, travel, or entertainment
22 card.

23 (e) "Credit card issuer's reimbursement fee" means the fee a
24 financial institution receives from a merchant's bank because 1 of
25 the persons to whom the financial institution has issued a credit
26 card has charged merchandise or services to the credit card.

27 **(F) "FFIEC" MEANS THE FEDERAL FINANCIAL INSTITUTIONS**

1 EXAMINATION COUNCIL ESTABLISHED PURSUANT TO SECTION 1004 OF THE
2 FINANCIAL INSTITUTIONS REGULATORY AND INTEREST RATE CONTROL ACT OF
3 1978, PUBLIC LAW 95-630, 12 USC 3303.

4 (G) ~~(F)~~—"Financial institution" means any of the following:

5 (i) A bank holding company, a national bank, a state chartered
6 bank, a state chartered savings bank, a federally chartered savings
7 association, or a federally chartered farm credit system
8 institution.

9 (ii) Any entity, other than an entity subject to the tax
10 imposed under chapter 12, who is directly or indirectly owned by an
11 entity described in subparagraph (i) and is a member of the unitary
12 business group.

13 (iii) A unitary business group of entities described in
14 subparagraph (i) or (ii), or both.

15 (H) ~~(G)~~—"Gross business" means the sum of the following less
16 transactions between those entities included in a unitary business
17 group:

18 (i) Fees, commissions, or other compensation for financial
19 services.

20 (ii) Net gains, not less than zero, from the sale of loans and
21 other intangibles.

22 (iii) Net gains, not less than zero, from trading in stocks,
23 bonds, or other securities.

24 (iv) Interest charged to customers for carrying debit balances
25 of margin accounts.

26 (v) Interest and dividends received.

27 (vi) Any other gross proceeds resulting from the operation as

1 a financial institution.

2 (I) ~~(h)~~—"Loan" means any extension of credit resulting from
3 direct negotiations between the financial institution and its
4 customer, or the purchase, in whole or in part, of such extension
5 of credit from another. Loans include participations, syndications,
6 and leases treated as loans for federal income tax purposes. Loans
7 shall not include properties treated as loans under section 595 of
8 the internal revenue code, futures or forward contracts, options,
9 notional principal contracts such as swaps, credit card
10 receivables, including purchased credit card relationships, non-
11 interest-bearing balances due from depository institutions, cash
12 items in the process of collection, federal funds sold, securities
13 purchased under agreements to resell, assets held in a trading
14 account, securities, interests in a real estate mortgage investment
15 conduit, or other mortgage-backed or asset-backed security, and
16 other similar items.

17 (J) ~~(i)~~—"Loan secured by real property" means that 50% or more
18 of the aggregate value of the collateral used to secure a loan or
19 other obligation, when valued at fair market value as of the time
20 the original loan or obligation was incurred, was real property.

21 (K) ~~(j)~~—"Merchant discount" means the fee or negotiated
22 discount charged to a merchant by the financial institution for the
23 privilege of participating in a program whereby a credit card is
24 accepted in payment for merchandise or services sold to the credit
25 card holder.

26 (L) ~~(k)~~—"Michigan obligations" means a bond, note, or other
27 obligation issued by a governmental unit described in section 3 of

1 the shared credit rating act, 1985 PA 227, MCL 141.1053.

2 (M) ~~(I)~~—"Participation" means an extension of credit in which
3 an undivided ownership interest is held on a pro rata basis in a
4 single loan or pool of loans and related collateral. In a loan
5 participation, the credit originator initially makes the loan and
6 then subsequently resells all or a portion of it to other lenders.
7 The participation may or may not be known to the borrower.

8 (N) ~~(m)~~—"Principal base of operations", with respect to
9 transportation property, means the place of more or less permanent
10 nature from which said property is regularly directed or
11 controlled. With respect to an employee, the principal base of
12 operations means the place of more or less permanent nature from
13 which the employee regularly does any of the following:

14 (i) Starts his or her work and to which he or she customarily
15 returns in order to receive instructions from his or her employer.

16 (ii) Communicates with his or her customers or other persons.

17 (iii) Performs any other functions necessary to the exercise
18 of his or her trade or profession at some other point or points.

19 (O) ~~(n)~~—"Real property owned" and "tangible personal property
20 owned" mean real and tangible personal property respectively on
21 which the financial institution may claim depreciation for federal
22 income tax purposes or to which the financial institution holds
23 legal title and on which no other person may claim depreciation for
24 federal income tax purposes or could claim depreciation if subject
25 to federal income tax. Real and tangible personal properties do not
26 include coin, currency, or property acquired in lieu of or pursuant
27 to a foreclosure.

1 (P) ~~(e)~~—"Regular place of business" means an office at which
2 the financial institution carries on its business in a regular and
3 systematic manner and which is continuously maintained, occupied,
4 and used by employees of the financial institution. The financial
5 institution shall have the burden of proving that an investment
6 asset or activity or trading asset or activity was properly
7 assigned to a regular place of business outside of this state by
8 demonstrating that the day-to-day decisions regarding the asset or
9 activity occurred at a regular place of business outside this
10 state. Where the day-to-day decisions regarding an investment asset
11 or activity or trading asset or activity occur at more than 1
12 regular place of business and 1 such regular place of business is
13 in this state and 1 such regular place of business is outside this
14 state, such asset or activity shall be considered to be located at
15 the regular place of business of the financial institution where
16 the investment or trading policies or guidelines with respect to
17 the asset or activity are established. Unless the financial
18 institution demonstrates to the contrary, such policies and
19 guidelines shall be presumed to be established at the commercial
20 domicile of the financial institution.

21 (Q) ~~(p)~~—"Rolling stock" means railroad freight or passenger
22 cars, locomotives, or other rail cars.

23 (R) ~~(q)~~—"Syndication" means an extension of credit in which 2
24 or more persons finance the credit and each person is at risk only
25 up to a specified percentage of the total extension of the credit
26 or up to a specified dollar amount.

27 (S) "TOP-TIERED PARENT ENTITY" MEANS THE HIGHEST LEVEL ENTITY

1 WITHIN THE UNITARY BUSINESS GROUP THAT IS REQUIRED TO FILE WITH A
2 REGULATORY AGENCY UNDER THE STANDARDS PRESCRIBED BY THE FFIEC.

3 (T) "TOTAL EQUITY CAPITAL" MEANS THAT SAME AMOUNT REPORTED BY
4 THE FINANCIAL INSTITUTION OR TOP-TIERED PARENT ENTITY, IN THE CASE
5 OF A UNITARY BUSINESS GROUP OF FINANCIAL INSTITUTIONS, AND AS
6 REPORTED FOR THE TAX YEAR ON ANY OF THE FOLLOWING FORMS OR
7 SUCCESSOR FORMS LISTED IN THIS SECTION AND DESIGNATED BY THE FFIEC,
8 THAT ARE FILED WITH THE OFFICE OF THE COMPTROLLER OF THE CURRENCY,
9 THE FEDERAL DEPOSIT INSURANCE CORPORATION, OR THE FEDERAL RESERVE
10 SYSTEM:

11 (i) THE CONSOLIDATED FINANCIAL STATEMENT FOR HOLDING
12 COMPANIES, FR Y-9C.

13 (ii) THE PARENT COMPANY ONLY FINANCIAL STATEMENTS FOR SMALL
14 HOLDING COMPANIES, FR Y-9SP.

15 (iii) TO THE EXTENT THAT FR Y-9C OR FR Y-9SP ARE NOT FILED FOR
16 THE TAX YEAR, THE CONSOLIDATED REPORTS OF CONDITION AND INCOME,
17 CALL REPORTS, FFIEC 031, 032, 033, OR 034.

18 (iv) A REPORT SIMILAR IN CONTENT AND DESIGNATED BY THE FFIEC.

19 (U) ~~(s)~~—"Transportation property" means vehicles and vessels
20 capable of moving under their own power, such as aircraft, trains,
21 water vessels, and motor vehicles, as well as any equipment or
22 containers attached to such property, such as rolling stock,
23 barges, or trailers.

24 (V) ~~(s)~~—"United States obligations" means all obligations of
25 the United States exempt from taxation under 31 USC 3124(a) or
26 exempt under the United States constitution or any federal statute,
27 including the obligations of any instrumentality or agency of the

1 United States that are exempt from state or local taxation under
2 the United States constitution or any statute of the United States.

3 Sec. 653. (1) Every financial institution with substantial
4 nexus in this state is subject to a franchise tax. The franchise
5 tax is imposed upon the tax base of the financial institution as
6 determined under section 655 after allocation or apportionment to
7 this state, at the rate of 0.29%.

8 (2) For purposes of this section, a financial institution has
9 substantial nexus in this state if the financial institution
10 satisfies any of the following:

11 (a) Has a physical presence in this state for a period of more
12 than 1 day during the tax year.

13 (b) Actively solicits sales in this state and has gross
14 receipts of \$350,000.00 or more sourced to this state. As used in
15 this subdivision, "actively solicits" means that term as defined
16 under section 621.

17 (c) Has an ownership interest or a beneficial interest in a
18 flow-through entity, directly or indirectly through 1 or more other
19 flow-through entities, that has substantial nexus in this state as
20 provided under this section or section 621.

21 (3) The tax under this chapter is in lieu of the tax levied
22 and imposed under ~~chapter 11~~ **CHAPTERS 11 AND 12** of this part.

23 Sec. 655. (1) For a financial institution, ~~tax base means the~~
24 ~~financial institution's net capital. Net capital means equity~~
25 ~~capital as computed in accordance with generally accepted~~
26 ~~accounting principles less the average daily book value of United~~
27 ~~States obligations and Michigan obligations. If the financial~~

~~institution does not maintain its books and records in accordance with generally accepted accounting principles, net capital shall be computed in accordance with the books and records used by the financial institution, so long as the method fairly reflects the financial institution's net capital for purposes of the tax levied by this chapter. Net capital does not include up to 125% of the minimum regulatory capitalization requirements of a person subject~~

~~to the tax imposed under chapter 12.~~ **THE TAX BASE IS THE TOTAL EQUITY CAPITAL OF THE FINANCIAL INSTITUTION OR TOP-TIERED PARENT ENTITY, IN THE CASE OF A UNITARY BUSINESS GROUP OF FINANCIAL INSTITUTIONS, AND, TO THE EXTENT THAT THE FOLLOWING ITEMS ARE INCLUDED IN TOTAL EQUITY CAPITAL, DEDUCT EACH OF THE FOLLOWING BEFORE ALLOCATION OR APPORTIONMENT:**

(A) THE AVERAGE DAILY BOOK VALUE OF UNITED STATES OBLIGATIONS OWNED BY MEMBERS OF THE UNITARY BUSINESS GROUP.

(B) THE AVERAGE DAILY BOOK VALUE OF MICHIGAN OBLIGATIONS OWNED BY MEMBERS OF THE UNITARY BUSINESS GROUP.

(C) SUBJECT TO THE LIMITATION PROVIDED IN THIS SUBDIVISION, THE EQUITY CAPITAL OF A PERSON THAT IS SUBJECT TO THE TAX IMPOSED UNDER CHAPTER 12, NOT TO EXCEED 125% OF THE MINIMUM REGULATORY CAPITALIZATION REQUIREMENTS OF THE MEMBER. FOR PURPOSES OF THIS SUBDIVISION, "EQUITY CAPITAL" MEANS EQUITY CAPITAL AS CALCULATED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

~~(2) Net capital~~ **THE TAX BASE** shall be determined by ~~adding the financial institution's net capital as of the close of the current tax year. and preceding 4 tax years and dividing the resulting sum by 5. If a financial institution has not been in existence for a~~

1 ~~period of 5 tax years, net capital shall be determined by adding~~
2 ~~together the financial institution's net capital for the number of~~
3 ~~tax years the financial institution has been in existence and~~
4 ~~dividing the resulting sum by the number of years the financial~~
5 ~~institution has been in existence. For purposes of this section, a~~
6 ~~partial year shall be treated as a full year.~~

7 ~~—— (3) For a unitary business group of financial institutions,~~
8 ~~net capital calculated under this section does not include the~~
9 ~~investment of 1 member of the unitary business group in another~~
10 ~~member of that unitary business group.~~

11 (3) ~~(4)~~ For purposes of this section, each of the following
12 applies:

13 (a) A change in identity, form, or place of organization of 1
14 financial institution shall be treated as if a single financial
15 institution had been in existence for the entire tax year in which
16 the change occurred and each tax year after the change.

17 (b) The combination of 2 or more financial institutions into 1
18 shall be treated as if the constituent financial institutions had
19 been a single financial institution in existence for the entire tax
20 year in which the combination occurred and each tax year after the
21 combination, and the book values and ~~deductions~~ **ADJUSTMENTS** for
22 United States obligations and Michigan obligations of the
23 constituent institutions shall be combined. A combination shall
24 include any acquisition required to be accounted for by the
25 surviving financial institution in accordance with generally
26 accepted accounting principles or a statutory merger or
27 consolidation.

1 (C) IF A UNITED STATES PERSON INCLUDED IN A UNITARY BUSINESS
2 GROUP OF FINANCIAL INSTITUTIONS OR A FINANCIAL INSTITUTION COMBINED
3 RETURN IS SUBJECT TO TAX UNDER CHAPTER 11 OR 12, ANY BUSINESS
4 INCOME OR EQUITY CAPITAL ATTRIBUTABLE TO THAT PERSON SHALL BE
5 ELIMINATED FROM THE TOTAL EQUITY CAPITAL OF THE UNITARY BUSINESS
6 GROUP AND ANY SALES OR GROSS BUSINESS ATTRIBUTABLE TO THAT PERSON
7 SHALL BE ELIMINATED FROM THE APPORTIONMENT FORMULA UNDER THIS
8 CHAPTER.

9 Sec. 657. (1) Except as otherwise provided under this chapter,
10 the tax base of a financial institution whose business activities
11 are confined solely to this state shall be allocated to this state.
12 The tax base of a financial institution whose business activities
13 are subject to tax both within and outside of this state shall be
14 apportioned to this state by multiplying the tax base by the gross
15 business factor.

16 (2) A financial institution whose business activities are
17 subject to tax both within and outside of this state is subject to
18 tax in another state in either of the following circumstances:

19 (a) The financial institution is subject to a business
20 privilege tax, a net income tax, a franchise tax measured by net
21 income, a franchise tax for the privilege of doing business, or a
22 corporate stock tax or a tax of the type imposed under this part in
23 that state.

24 (b) That state has jurisdiction to subject the financial
25 institution to 1 or more of the taxes listed in subdivision (a)
26 regardless of whether that state does or does not subject the
27 financial institution to that tax.

1 (3) Except as otherwise provided in **THIS SUBSECTION OR**
2 subsection (4), the gross business factor is a fraction, the
3 numerator of which is the total gross business of the financial
4 institution in this state during the tax year and the denominator
5 of which is the total gross business of the financial institution
6 everywhere during the tax year. **THE DENOMINATOR SHALL NOT INCLUDE**
7 **ANY GROSS BUSINESS ATTRIBUTABLE TO THE FOREIGN BUSINESS OF A**
8 **CONTROLLED FOREIGN CORPORATION.**

9 (4) Except as otherwise provided under this subsection, for a
10 ~~financial institution that is included in a unitary business group~~
11 **OF FINANCIAL INSTITUTIONS**, gross business includes gross business
12 in this state of every financial institution included in the
13 unitary business group without regard to whether the financial
14 institution has nexus in this state. Gross business between
15 financial institutions included in a unitary business group must be
16 eliminated in calculating the gross business factor.

17 (5) **FOR A UNITARY BUSINESS GROUP OF FINANCIAL INSTITUTIONS,**
18 **THE GROSS BUSINESS FACTOR SHALL INCLUDE THE GROSS BUSINESS OF ALL**
19 **MEMBERS OF THE UNITARY GROUP DURING THE TAX YEAR. FOR THOSE MEMBERS**
20 **THAT WERE ACQUIRED OR DISPOSED OF BY THE UNITARY BUSINESS GROUP**
21 **DURING THE TAX YEAR, THE GROSS BUSINESS FACTOR SHALL INCLUDE THE**
22 **GROSS BUSINESS OF THE PART-YEAR MEMBER FOR THAT PORTION OF THE TAX**
23 **YEAR DURING WHICH THE MEMBER MET THE CONTROL AND RELATIONSHIP**
24 **PARAMETERS UNDER SECTION 611(6), OR FOR THE PORTION OF THE TAX YEAR**
25 **FOR WHICH THE MEMBER FILED AS A PART OF AN AFFILIATED GROUP UNDER**
26 **SECTION 691(2).**

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

1 years beginning after December 31, 2015.