

SENATE BILL No. 234

March 24, 2015, Introduced by Senators BOOHER and BRANDENBURG and referred to the Committee on Finance.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending sections 651, 655, and 657 (MCL 206.651, 206.655, and
206.657), section 651 as amended by 2011 PA 171 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) "APPLICABLE CONTROLLED FOREIGN CORPORATION" MEANS A
3 CONTROLLED FOREIGN CORPORATION THAT SATISFIES ALL OF THE FOLLOWING:

4 (i) THE FINANCIAL INSTITUTION OWNS GREATER THAN 50% OF THE
5 OUTSTANDING INTEREST IN THE CONTROLLED FOREIGN CORPORATION.

6 (ii) CONSOLIDATED FINANCIAL REPORTING IS REQUIRED UNDER
7 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

8 (B) ~~(a)~~ "Billing address" means the location indicated in the
9 books and records of the financial institution on the first day of

1 the tax year or on a later date in the tax year when the customer
2 relationship began as the address where any notice, statement, or
3 bill relating to a customer's account is mailed.

4 (C) ~~(b)~~—"Borrower is located in this state" or "credit card
5 holder is located in this state" means a borrower, other than a
6 credit card holder, that is engaged in a trade or business which
7 maintains its commercial domicile in this state, or a borrower that
8 is not engaged in a trade or business or a credit card holder whose
9 billing address is in this state.

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

26 (E) "CONTROLLED FOREIGN CORPORATION" MEANS THAT TERM AS
27 DEFINED IN SECTION 957 OF THE INTERNAL REVENUE CODE.

1 (F) ~~(d)~~—"Credit card" means a credit, travel, or entertainment
2 card.

3 (G) ~~(e)~~—"Credit card issuer's reimbursement fee" means the fee
4 a financial institution receives from a merchant's bank because 1
5 of the persons to whom the financial institution has issued a
6 credit card has charged merchandise or services to the credit card.

7 (H) "EQUITY CAPITAL" MEANS, FOR A FINANCIAL INSTITUTION THAT
8 IS NOT A MEMBER OF A UNITARY BUSINESS GROUP, THE TOTAL EQUITY
9 CAPITAL OF THE FINANCIAL INSTITUTION, AND FOR A UNITARY BUSINESS
10 GROUP, THE TOTAL EQUITY CAPITAL OF THE TOP-TIERED PARENT ENTITY OF
11 THE UNITARY BUSINESS GROUP, AS OF THE LAST DAY OF THE TAX YEAR AS
12 REPORTED ON ANY OF THE FOLLOWING FORMS, OR SUCCESSOR FORMS
13 DESIGNATED BY THE FFIEC, THAT ARE FILED WITH THE OFFICE OF THE
14 COMPTROLLER OF THE CURRENCY, THE FEDERAL DEPOSIT INSURANCE
15 CORPORATION, OR THE FEDERAL RESERVE SYSTEM BY THE FINANCIAL
16 INSTITUTION OR THE TOP-TIERED PARENT ENTITY OF THE UNITARY BUSINESS
17 GROUP:

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

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

22 (iii) THE CONSOLIDATED REPORTS OF CONDITION AND INCOME, CALL
23 REPORTS.

24 (I) "FFIEC" MEANS THE FEDERAL FINANCIAL INSTITUTIONS
25 EXAMINATION COUNCIL ESTABLISHED PURSUANT TO SECTION 1004 OF THE
26 FINANCIAL INSTITUTIONS REGULATORY AND INTEREST RATE CONTROL ACT OF
27 1978, PUBLIC LAW 95-630, 12 USC 3303.

1 **(J)** ~~(f)~~—"Financial institution" means any of the following:

2 (i) A bank holding company, a national bank, a state chartered
3 bank, a state chartered savings bank, a federally chartered savings
4 association, or a federally chartered farm credit system
5 institution.

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

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

12 **(K)** ~~(g)~~—"Gross business" means the sum of the following less
13 transactions between those entities included in a unitary business
14 group:

15 (i) Fees, commissions, or other compensation for financial
16 services.

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

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

21 (iv) Interest charged to customers for carrying debit balances
22 of margin accounts.

23 (v) Interest and dividends received.

24 (vi) Any other gross proceeds resulting from the operation as a
25 financial institution.

26 **(L)** ~~(h)~~—"Loan" means any extension of credit resulting from
27 direct negotiations between the financial institution and its

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

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

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

23 (O) ~~(k)~~—"Michigan obligations" means a bond, note, or other
24 obligation issued by a governmental unit described in section 3 of
25 the shared credit rating act, 1985 PA 227, MCL 141.1053.

26 (P) "NET CAPITAL" MEANS EQUITY CAPITAL SUBJECT TO THE
27 ADJUSTMENTS CONTAINED WITHIN THIS CHAPTER.

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

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

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

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

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

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

27 (T) ~~(o)~~—"Regular place of business" means an office at which

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

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

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

26 (W) "TAX YEAR" MEANS THE CALENDAR YEAR OR FISCAL YEAR FOR
27 WHICH THE TAX LEVIED UNDER CHAPTER 13 IS REQUIRED TO BE PAID.

1 (X) "TOP-TIERED PARENT ENTITY" MEANS THE HIGHEST LEVEL ENTITY
2 WITHIN THE UNITARY BUSINESS GROUP THAT IS REQUIRED TO FILE WITH A
3 REGULATORY AGENCY UNDER THE STANDARDS PRESCRIBED BY THE FFIEC.

4 (Y) "TOTAL EQUITY CAPITAL" MEANS THE EQUITY CAPITAL OF THE
5 TOP-TIERED PARENT ENTITY OF THE UNITARY BUSINESS GROUP. FOR A
6 FINANCIAL INSTITUTION THAT IS NOT A MEMBER OF A UNITARY BUSINESS
7 GROUP, TOTAL EQUITY CAPITAL MEANS THE EQUITY CAPITAL OF THE
8 FINANCIAL INSTITUTION.

9 (Z) ~~(r)~~—"Transportation property" means vehicles and vessels
10 capable of moving under their own power, such as aircraft, trains,
11 water vessels, and motor vehicles, as well as any equipment or
12 containers attached to such property, such as rolling stock,
13 barges, or trailers.

14 (AA) "UNITARY BUSINESS GROUP" MEANS A GROUP OF UNITED STATES
15 PERSONS THAT ARE CORPORATIONS, INSURANCE COMPANIES, OR FINANCIAL
16 INSTITUTIONS, OTHER THAN A FOREIGN OPERATING ENTITY, 1 OF WHICH
17 OWNS OR CONTROLS, DIRECTLY OR INDIRECTLY, MORE THAN 50% OF THE
18 OWNERSHIP INTEREST WITH VOTING RIGHTS OR OWNERSHIP INTERESTS THAT
19 CONFER COMPARABLE RIGHTS TO VOTING RIGHTS OF THE OTHER MEMBERS, AND
20 THAT HAS BUSINESS ACTIVITIES OR OPERATIONS WHICH RESULT IN A FLOW
21 OF VALUE BETWEEN OR AMONG MEMBERS INCLUDED IN THE UNITARY BUSINESS
22 GROUP OR HAS BUSINESS ACTIVITIES OR OPERATIONS THAT ARE INTEGRATED
23 WITH, ARE DEPENDENT UPON, OR CONTRIBUTE TO EACH OTHER. UNITARY
24 BUSINESS GROUP DOES NOT INCLUDE A FOREIGN OPERATING ENTITY.

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

1 including the obligations of any instrumentality or agency of the
2 United States that are exempt from state or local taxation under
3 the United States constitution or any statute of the United States.

4 Sec. 655. (1) ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**
5 **CHAPTER, FOR** a financial institution, tax base means the financial
6 institution's net capital . ~~Net capital means equity capital as~~
7 ~~computed in accordance with generally accepted accounting~~
8 ~~principles less the average daily book value of United States~~
9 ~~obligations and Michigan obligations. If the financial institution~~
10 ~~does not maintain its books and records in accordance with~~
11 ~~generally accepted accounting principles, net capital shall be~~
12 ~~computed in accordance with the books and records used by the~~
13 ~~financial institution, so long as the method fairly reflects the~~
14 ~~financial institution's net capital for purposes of the tax levied~~
15 ~~by this chapter. Net capital does not include up to 125% of the~~
16 ~~minimum regulatory capitalization requirements of a person subject~~
17 ~~to the tax imposed under chapter 12.~~ **SUBJECT TO THE FOLLOWING**
18 **ADJUSTMENTS BEFORE ALLOCATION OR APPORTIONMENT:**

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

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

23 (C) DEDUCT, SUBJECT TO THE LIMITATION PROVIDED IN THIS
24 SUBDIVISION, THE EQUITY CAPITAL OF A MEMBER OF THE UNITARY BUSINESS
25 GROUP THAT IS SUBJECT TO THE TAX IMPOSED UNDER CHAPTER 12, NOT TO
26 EXCEED 125% OF THE MINIMUM REGULATORY CAPITALIZATION REQUIREMENTS
27 OF THE MEMBER.

1 (D) DEDUCT, SUBJECT TO THE LIMITATION PROVIDED IN THIS
2 SUBDIVISION, THE EQUITY CAPITAL OF AN APPLICABLE CONTROLLED FOREIGN
3 CORPORATION, NOT TO EXCEED 125% OF THE CONTROLLED FOREIGN
4 CORPORATION'S MINIMUM REGULATORY CAPITALIZATION RATE.

5 (2) Net capital shall be determined ~~by adding the financial~~
6 ~~institution's net capital as of the close of the current tax year.~~
7 ~~and preceding 4 tax years and dividing the resulting sum by 5. If a~~
8 ~~financial institution has not been in existence for a period of 5~~
9 ~~tax years, net capital shall be determined by adding together the~~
10 ~~financial institution's net capital for the number of tax years the~~
11 ~~financial institution has been in existence and dividing the~~
12 ~~resulting sum by the number of years the financial institution has~~
13 ~~been in existence.~~ For purposes of this section, a partial year
14 shall be treated as a full year.

15 (3) For a unitary business group of financial institutions,
16 ~~net~~ BOTH OF THE FOLLOWING APPLY:

17 (A) NET capital calculated under this section does not include
18 the investment of 1 member of the unitary business group in another
19 member of that unitary business group.

20 (B) NET CAPITAL CALCULATED UNDER THIS SECTION IS THE NET
21 CAPITAL OF THE TAXPAYER OR THE TOP-TIERED PARENT ENTITY OF THE
22 UNITARY BUSINESS GROUP OF WHICH THE FINANCIAL INSTITUTION IS A
23 MEMBER.

24 (4) For purposes of this section, each of the following
25 applies:

26 (a) A change in identity, form, or place of organization of 1
27 financial institution shall be treated as if a single financial

1 institution had been in existence for the entire tax year in which
2 the change occurred and each tax year after the change.

3 (b) The combination of 2 or more financial institutions into 1
4 shall be treated as if the constituent financial institutions had
5 been a single financial institution in existence for the entire tax
6 year in which the combination occurred and each tax year after the
7 combination, and the book values and ~~deductions~~ **ADJUSTMENTS** for
8 United States obligations and Michigan obligations of the
9 constituent institutions shall be combined. A combination shall
10 include any acquisition required to be accounted for by the
11 surviving financial institution in accordance with generally
12 accepted accounting principles or a statutory merger or
13 consolidation.

14 **(C) IF A UNITED STATES PERSON INCLUDED IN A FINANCIAL**
15 **INSTITUTION UNITARY BUSINESS GROUP OR A FINANCIAL INSTITUTION**
16 **COMBINED RETURN IS SUBJECT TO TAX UNDER CHAPTER 11 OR 12, ANY**
17 **BUSINESS INCOME OR EQUITY CAPITAL ATTRIBUTABLE TO THAT PERSON SHALL**
18 **BE ELIMINATED FROM THE EQUITY CAPITAL OF THE UNITARY BUSINESS GROUP**
19 **AND ANY SALES OR GROSS BUSINESS ATTRIBUTABLE TO THAT PERSON SHALL**
20 **BE ELIMINATED FROM THE APPORTIONMENT FORMULA UNDER THIS PART.**

21 Sec. 657. (1) Except as otherwise provided under this chapter,
22 the tax base of a financial institution whose business activities
23 are confined solely to this state shall be allocated to this state.
24 The tax base of a financial institution whose business activities
25 are subject to tax both within and outside of this state shall be
26 apportioned to this state by multiplying the tax base by the gross
27 business factor.

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

4 (a) The financial institution is subject to a business
5 privilege tax, a net income tax, a franchise tax measured by net
6 income, a franchise tax for the privilege of doing business, or a
7 corporate stock tax or a tax of the type imposed under this part in
8 that state.

9 (b) That state has jurisdiction to subject the financial
10 institution to 1 or more of the taxes listed in subdivision (a)
11 regardless of whether that state does or does not subject the
12 financial institution to that tax.

13 (3) Except as otherwise provided in **THIS SUBSECTION OR**
14 subsection (4), the gross business factor is a fraction, the
15 numerator of which is the total gross business of the financial
16 institution in this state during the tax year and the denominator
17 of which is the total gross business of the financial institution
18 everywhere during the tax year. **THE DENOMINATOR SHALL NOT INCLUDE**
19 **ANY GROSS BUSINESS ATTRIBUTABLE TO THE FOREIGN BUSINESS OF AN**
20 **APPLICABLE CONTROLLED FOREIGN CORPORATION.**

21 (4) Except as otherwise provided under this subsection, for a
22 financial institution that is included in a unitary business group,
23 gross business includes gross business in this state of every
24 financial institution included in the unitary business group
25 without regard to whether the financial institution has nexus in
26 this state. Gross business between financial institutions included
27 in a unitary business group must be eliminated in calculating the

1 gross business factor.

2 (5) FOR A UNITARY BUSINESS GROUP OF FINANCIAL INSTITUTIONS,
3 THE GROSS BUSINESS FACTOR SHALL INCLUDE THE GROSS BUSINESS OF ALL
4 MEMBERS OF THE UNITARY GROUP DURING THE TAX YEAR. FOR THOSE MEMBERS
5 THAT WERE ACQUIRED OR DISPOSED OF BY THE UNITARY BUSINESS GROUP
6 DURING THE TAX YEAR, THE GROSS BUSINESS FACTOR SHALL INCLUDE THE
7 GROSS BUSINESS OF THE PART-YEAR MEMBER THAT WAS RECEIVED DURING
8 THAT PORTION OF THE TAX YEAR THAT THE UNITARY BUSINESS GROUP HAD
9 OWNERSHIP OF THE PART-YEAR MEMBER. IF SECTION 655(3)(B) APPLIES,
10 THE GROSS BUSINESS FACTOR OF THE UNITARY BUSINESS GROUP SHALL
11 INCLUDE THE GROSS BUSINESS OF THE NONSURVIVING MEMBER INCLUDED IN
12 THE SURVIVING FINANCIAL INSTITUTION'S GROSS BUSINESS DURING THE TAX
13 YEAR.

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.