

**SUBSTITUTE FOR
SENATE BILL NO. 362**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

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

5 (3) Except as otherwise provided in **THIS SUBSECTION OR**
6 subsection (4), the gross business factor is a fraction, the
7 numerator of which is the total gross business of the financial
8 institution in this state during the tax year and the denominator
9 of which is the total gross business of the financial institution
10 everywhere during the tax year. **THE DENOMINATOR SHALL INCLUDE ANY**
11 **GROSS BUSINESS ATTRIBUTABLE TO THE FOREIGN BUSINESS OF A PERSON**
12 **THAT IS A FOREIGN OPERATING ENTITY OR A FOREIGN PERSON OR**
13 **ATTRIBUTABLE TO OPERATIONS OUTSIDE OF THE UNITED STATES.**

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

22 (5) **FOR A UNITARY BUSINESS GROUP OF FINANCIAL INSTITUTIONS,**
23 **THE GROSS BUSINESS FACTOR SHALL INCLUDE THE GROSS BUSINESS OF ALL**
24 **MEMBERS OF THE UNITARY GROUP DURING THE TAX YEAR. FOR THOSE MEMBERS**
25 **THAT WERE ACQUIRED OR DISPOSED OF BY THE UNITARY BUSINESS GROUP**
26 **DURING THE TAX YEAR, THE GROSS BUSINESS FACTOR SHALL INCLUDE THE**
27 **GROSS BUSINESS OF THE PART-YEAR MEMBER FOR THAT PORTION OF THE TAX**

1 YEAR DURING WHICH THE MEMBER MET THE CONTROL AND RELATIONSHIP
2 PARAMETERS UNDER SECTION 611(6), OR FOR THE PORTION OF THE TAX YEAR
3 FOR WHICH THE MEMBER FILED AS A PART OF AN AFFILIATED GROUP UNDER
4 SECTION 691(2).

5 Enacting section 1. (1) This amendatory act is effective for
6 tax years beginning after December 31, 2017.

7 (2) The provisions of section 651 of the income tax act of
8 1967, 1967 PA 281, MCL 206.651, as amended by this amendatory act,
9 are curative and intended to clarify existing law and accurately
10 reflect the interpretation and application of those provisions in
11 accordance with the notice to taxpayers dated November 21, 2016,
12 regarding 5-year averaging calculation of net equity capital for
13 financial institutions.

14 Enacting section 2. This amendatory act does not take effect
15 unless Senate Bill No. 361 of the 99th Legislature is enacted into
16 law.