

Act No. 32
Public Acts of 2018
Approved by the Governor
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Reps. Vaupel and Lucido

ENROLLED HOUSE BILL No. 5047

AN ACT to amend 1967 PA 281, entitled “An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement by lien and otherwise of taxes on or measured by net income and on certain commercial, business, and financial activities; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal acts and parts of acts,” by amending section 607 (MCL 206.607), as amended by 2011 PA 306.

The People of the State of Michigan enact:

Sec. 607. (1) “Federal taxable income” means taxable income as defined in section 63 of the internal revenue code, except that federal taxable income shall be calculated as if section 168(k) and section 199 of the internal revenue code were not in effect.

(2) “Flow-through entity” means an entity that for the applicable tax year is treated as a subchapter S corporation under section 1362(a) of the internal revenue code, a general partnership, a trust, a limited partnership, a limited liability partnership, or a limited liability company, that for the tax year is not taxed as a corporation for federal income tax purposes. Flow-through entity does not include any entity disregarded under section 699.

(3) “Foreign operating entity” means a United States corporation that satisfies each of the following:

(a) Would otherwise be a part of a unitary business group that has at least 1 corporation included in the unitary business group that is taxable in this state.

(b) Has substantial operations outside the United States, the District of Columbia, any territory or possession of the United States except for the Commonwealth of Puerto Rico, or a political subdivision of any of the foregoing.

(c) At least 80% of its income is active foreign business income as defined in section 861(c)(1)(B) of the internal revenue code.

(4) “Gross receipts” means the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others except for the following:

(a) Proceeds from sales by a principal that the taxpayer collects in an agency capacity solely on behalf of the principal and delivers to the principal.

- (b) Amounts received by the taxpayer as an agent solely on behalf of the principal that are expended by the taxpayer for any of the following:
- (i) The performance of a service by a third party for the benefit of the principal that is required by law to be performed by a licensed person.
 - (ii) The performance of a service by a third party for the benefit of the principal that the taxpayer has not undertaken a contractual duty to perform.
 - (iii) Principal and interest under a mortgage loan or land contract, lease or rental payments, or taxes, utilities, or insurance premiums relating to real or personal property owned or leased by the principal.
 - (iv) A capital asset of a type that is, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated cost recovery by the principal for federal income tax purposes, or for real property owned or leased by the principal.
 - (v) Property not described under subparagraph (iv) purchased by the taxpayer on behalf of the principal and that the taxpayer does not take title to or use in the course of performing its contractual business activities.
 - (vi) Fees, taxes, assessments, levies, fines, penalties, or other payments established by law that are paid to a governmental entity and that are the legal obligation of the principal.
- (c) Amounts that are excluded from gross income of a foreign corporation engaged in the international operation of aircraft under section 883(a) of the internal revenue code.
- (d) Amounts received by an advertising agency used to acquire advertising media time, space, production, or talent on behalf of another person.
- (e) Notwithstanding any other provision of this section, amounts received by a taxpayer that manages real property owned by the taxpayer's client that are deposited into a separate account kept in the name of the taxpayer's client and that are not reimbursements to the taxpayer and are not indirect payments for management services that the taxpayer provides to that client.
- (f) Proceeds from the taxpayer's transfer of an account receivable if the sale that generated the account receivable was included in gross receipts for federal income tax purposes. This subdivision does not apply to a taxpayer that during the tax year both buys and sells any receivables.
- (g) Proceeds from any of the following:
- (i) The original issue of stock or equity instruments.
 - (ii) The original issue of debt instruments.
- (h) Refunds from returned merchandise.
- (i) Cash and in-kind discounts.
- (j) Trade discounts.
- (k) Federal, state, or local tax refunds.
- (l) Security deposits.
- (m) Payment of the principal portion of loans.
- (n) Value of property received in a like-kind exchange.
- (o) Proceeds from a sale, transaction, exchange, involuntary conversion, or other disposition of tangible, intangible, or real property that is a capital asset as defined in section 1221(a) of the internal revenue code or land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code, less any gain from the disposition to the extent that gain is included in federal taxable income.
- (p) The proceeds from a policy of insurance, a settlement of a claim, or a judgment in a civil action less any proceeds under this subdivision that are included in federal taxable income.
- (5) "Insurance company" means an authorized insurer as defined in section 108 of the insurance code of 1956, 1956 PA 218, MCL 500.108. Insurance company does not include a health maintenance organization authorized under chapter 35 of the insurance code of 1956, 1956 PA 218, MCL 500.3501 to 500.3573.
- (6) "Internal revenue code" means the United States internal revenue code of 1986 in effect on January 1, 2012 or, at the option of the taxpayer, in effect for the tax year.
- (7) "Member", when used in reference to a flow-through entity, means a shareholder of a subchapter S corporation, a partner in a general partnership, a limited partnership, or a limited liability partnership, a member of a limited liability company, or a beneficiary of a trust that is a flow-through entity.

Enacting section 1. This amendatory act is retroactive and effective for tax years that begin on and after January 1, 2016.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4950 of the 99th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor