

**SUBSTITUTE FOR
SENATE BILL NO. 937**

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending sections 703 and 705 (MCL 206.703 and 206.705), section
703 as amended by 2016 PA 158 and section 705 as amended by 2011 PA
192.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 703. (1) A person who disburses pension or annuity
2 payments, except as otherwise provided under this section, shall
3 withhold a tax in an amount computed by applying the rate
4 prescribed in section 51 on the taxable part of payments from an
5 employer pension, annuity, profit-sharing, stock bonus, or other
6 deferred compensation plan as well as from an individual retirement
7 arrangement, an annuity, an endowment, or a life insurance contract

1 issued by a life insurance company. Withholding ~~shall~~**must** be
2 calculated on the taxable disbursement after deducting from the
3 taxable portion the same proportion of the total amount of personal
4 and dependency exemptions of the individual allowed under this act.
5 Withholding is not required on any part of a distribution that is
6 not expected to be includable in the recipient's gross income or
7 that is deductible from adjusted gross income under section
8 30(1)(e) or (f).

9 (2) Every employer in this state required under the provisions
10 of the internal revenue code to withhold a tax on the compensation
11 of an individual, except as otherwise provided, shall deduct and
12 withhold a tax in an amount computed by applying, except as
13 provided by subsection (14), the rate prescribed in section 51 to
14 the remainder of the compensation after deducting from compensation
15 the same proportion of the total amount of personal and dependency
16 exemptions of the individual allowed under this act that the period
17 of time covered by the compensation is of 1 year. The department
18 may prescribe withholding tables that may be used by employers to
19 compute the amount of tax required to be withheld.

20 (3) Except as otherwise provided under this section, for tax
21 years that begin before July 1, 2016, every flow-through entity in
22 this state shall withhold a tax in an amount computed by applying
23 the rate prescribed in section 51 to the distributive share of
24 taxable income reasonably expected to accrue after allocation and
25 apportionment under chapter 3 of each nonresident member who is an
26 individual after deducting from that distributive income the same
27 proportion of the total amount of personal and dependency
28 exemptions of the individual allowed under this act. All of the
29 taxes withheld under this section shall accrue to the state on

1 April 15, July 15, and October 15 of the flow-through entity's tax
2 year and January 15 of the following year, except a flow-through
3 entity that is not on a calendar year basis shall substitute the
4 appropriate due dates in the flow-through entity's fiscal year that
5 correspond to those in a calendar year. Withholding for each period
6 ~~shall~~**must** be equal to 1/4 of the total withholding calculated on
7 the distributive share that is reasonably expected to accrue during
8 the tax year of the flow-through entity.

9 (4) Except as otherwise provided under this section, for tax
10 years that begin before July 1, 2016, every flow-through entity
11 with business activity in this state that has more than \$200,000.00
12 of business income reasonably expected to accrue in the tax year
13 after allocation or apportionment shall withhold a tax in an amount
14 computed by applying the rate prescribed in section 623 to the
15 distributive share of the business income of each member that is a
16 corporation or that is a flow-through entity. For purposes of
17 calculating the \$200,000.00 withholding threshold, the business
18 income of a flow-through entity shall be apportioned to this state
19 by multiplying the business income by the sales factor of the flow-
20 through entity. The sales factor of the flow-through entity is a
21 fraction, the numerator of which is the total sales of the flow-
22 through entity in this state during the tax year and the
23 denominator of which is the total sales of the flow-through entity
24 everywhere during the tax year. As used in this subsection,
25 "business income" means that term as defined in section ~~603(2)~~.

26 **603.** For a partnership or S corporation, business income includes
27 payments and items of income and expense that are attributable to
28 business activity of the partnership or S corporation and
29 separately reported to the members. As used in this subsection,

1 "sales" means that term as defined in section 609 and sales in this
2 state is determined as provided in sections 665 and 669. All of the
3 taxes withheld under this section shall accrue to the state on
4 April 15, July 15, and October 15 of the flow-through entity's tax
5 year and January 15 of the following year, except a flow-through
6 entity that is not on a calendar year basis shall substitute the
7 appropriate due dates in the flow-through entity's fiscal year that
8 correspond to those in a calendar year. Withholding for each period
9 ~~shall~~**must** be equal to 1/4 of the total withholding calculated on
10 the distributive share of business income that is reasonably
11 expected to accrue during the tax year of the flow-through entity.

12 (5) For tax years that begin before July 1, 2016, if a flow-
13 through entity is subject to the withholding requirements of
14 subsection (4), then a member of that flow-through entity that is
15 itself a flow-through entity shall withhold a tax on the
16 distributive share of business income as described in subsection
17 (4) of each of its members. The department shall apply tax withheld
18 by a flow-through entity on the distributive share of business
19 income of a member flow-through entity to the withholding required
20 of that member flow-through entity. All of the taxes withheld under
21 this section ~~shall~~**must** accrue to the state on April 15, July 15,
22 and October 15 of the flow-through entity's tax year and January 15
23 of the following year, except a flow-through entity that is not on
24 a calendar year basis shall substitute the appropriate due dates in
25 the flow-through entity's fiscal year that correspond to those in a
26 calendar year. Withholding for each period ~~shall~~**must** be equal to
27 1/4 of the total withholding calculated on the distributive share
28 of business income that is reasonably expected to accrue during the
29 tax year of the flow-through entity.

1 (6) Every casino licensee shall withhold a tax in an amount
2 computed by applying the rate prescribed in section 51 to the
3 winnings of a nonresident reportable by the casino licensee under
4 the internal revenue code.

5 (7) Every race meeting licensee or track licensee shall
6 withhold a tax in an amount computed by applying the rate
7 prescribed in section 51 to a payoff price on a winning ticket of a
8 nonresident reportable by the race meeting licensee or track
9 licensee under the internal revenue code that is the result of
10 pari-mutuel wagering at a licensed race meeting.

11 (8) Every casino licensee or race meeting licensee or track
12 licensee shall report winnings of a resident reportable by the
13 casino licensee or race meeting licensee or track licensee under
14 the internal revenue code to the department in the same manner and
15 format as required under the internal revenue code.

16 (9) Every eligible production company shall, to the extent not
17 withheld by a professional services corporation or professional
18 employer organization, deduct and withhold a tax in an amount
19 computed by applying the rate prescribed in section 51 to the
20 remainder of the payments made to the professional services
21 corporation or professional employer organization for the services
22 of a performing artist or crew member after deducting from those
23 payments the same proportion of the total amount of personal and
24 dependency exemptions of the individuals allowed under this act.

25 (10) Every publicly traded partnership that has equity
26 securities registered with the securities and exchange commission
27 under section 12 of title I of the securities and exchange act of
28 1934, 15 USC 78l, ~~shall not be~~ **is not** subject to withholding.

29 (11) Except as otherwise provided under this subsection, all

1 of the taxes withheld under this section ~~shall~~**must** accrue to the
2 state on the last day of the month in which the taxes are withheld
3 but shall be returned and paid to the department by the employer,
4 eligible production company, casino licensee, or race meeting
5 licensee or track licensee within 15 days after the end of any
6 month or as provided in section 705. For an employer that has
7 entered into an agreement with a community college pursuant to
8 chapter 13 of the community college act of 1966, 1966 PA 331, MCL
9 389.161 to 389.166, a portion of the taxes withheld under this
10 section that are attributable to each employee in a new job created
11 pursuant to the agreement ~~shall~~**must** accrue to the community
12 college on the last day of the month in which the taxes are
13 withheld but shall be returned and paid to the community college by
14 the employer within 15 days after the end of any month or as
15 provided in section 705 for as long as the agreement remains in
16 effect. For purposes of this act and 1941 PA 122, MCL 205.1 to
17 205.31, payments made by an employer to a community college under
18 this subsection ~~shall~~**must** be considered income taxes paid to this
19 state.

20 (12) A person required by this section to deduct and withhold
21 taxes on income under this section holds the amount of tax withheld
22 as a trustee for this state and is liable for the payment of the
23 tax to this state or, if applicable, to the community college and
24 is not liable to any individual for the amount of the payment.

25 (13) An employer in this state is not required to deduct and
26 withhold a tax on the compensation paid to a nonresident individual
27 employee, who, under section 256, may claim a tax credit equal to
28 or in excess of the tax estimated to be due for the tax year or is
29 exempted from liability for the tax imposed by this act. In each

1 tax year, the nonresident individual shall furnish to the employer,
2 on a form approved by the department, a verified statement of
3 nonresidence.

4 (14) A person required to withhold a tax under this act, by
5 the fifteenth day of the following month, shall provide the
6 department with a copy of any exemption certificate on which a
7 person with income subject to withholding under subsection (6) or
8 (7) claims more than 9 personal or dependency exemptions, claims a
9 status that exempts the person subject to withholding under
10 subsection (6) or (7) from withholding under this section.

11 (15) A person who disburses annuity payments pursuant to the
12 terms of a qualified charitable gift annuity is not required to
13 deduct and withhold a tax on those payments as prescribed under
14 subsection (1). As used in this subsection, "qualified charitable
15 gift annuity" means an annuity described under section 501(m)(5) of
16 the internal revenue code and issued by an organization exempt
17 under section 501(c)(3) of the internal revenue code.

18 (16) Notwithstanding the requirements of subsections (4) and
19 (5), if a flow-through entity receives an exemption certificate
20 from a member other than a nonresident individual, the flow-through
21 entity shall not withhold a tax on the distributive share of the
22 business income of that member if all of the following conditions
23 are met:

24 (a) The exemption certificate is completed by the member in
25 the form and manner prescribed by the department and certifies that
26 the member will do all of the following:

27 (i) File the returns required under this act.

28 (ii) Pay or withhold the tax required under this act on the
29 distributive share of the business income received from any flow-

1 through entity in which the member has an ownership or beneficial
2 interest, directly or indirectly through 1 or more other flow-
3 through entities.

4 (iii) Submit to the taxing jurisdiction of this state for
5 purposes of collection of the tax under this act together with
6 related interest and penalties under 1941 PA 122, MCL 205.1 to
7 205.31, imposed on the member with respect to the distributive
8 share of the business income of that member.

9 (b) The department may require the member to file the
10 exemption certificate with the department and provide a copy to the
11 flow-through entity.

12 (c) The department may require a flow-through entity that
13 receives an exemption certificate to attach a copy of the exemption
14 certificate to the annual reconciliation return as required by
15 section 711. A flow-through entity that is entirely exempt from the
16 withholding requirements of subsection (4) or (5) by this
17 subsection may be required to furnish a copy of the exemption
18 certificate in another manner prescribed by the department.

19 (d) A copy of the exemption certificate ~~shall~~**must** be retained
20 by the member and flow-through entity and made available to the
21 department upon request. Any copy of the exemption certificate
22 ~~shall~~**must** be maintained in a format and for the period required by
23 1941 PA 122, MCL 205.1 to 205.31.

24 (17) The department may revoke the election provided for in
25 subsection (16) if it determines that the member or a flow-through
26 entity is not abiding by the terms of the exemption certificate or
27 the requirements of subsection (16). If the department does revoke
28 the election option under subsection (16), the department shall
29 notify the affected flow-through entity that withholding is

1 required on the member under subsection (4) or (5), beginning 60
2 days after notice of revocation is received.

3 (18) Notwithstanding the requirements of subsections (4) and
4 (5), a flow-through entity is not required to withhold in
5 accordance with this section for a member that voluntarily elects
6 to file a return and pay the tax imposed by the Michigan business
7 tax act under section 680 or section 500 of the Michigan business
8 tax act, 2007 PA 36, MCL 208.1500.

9 (19) Notwithstanding the withholding requirements of
10 subsection (3), (4), or (5), a flow-through entity is not required
11 to comply with those withholding requirements to the extent that
12 the withholding would violate any of the following:

13 (a) Housing assistance payment programs distribution
14 restrictions under 24 CFR part 880, 881, 883, or 891.

15 (b) Rural housing service return on investment restrictions
16 under 7 CFR 3560.68 or 3560.305.

17 (c) Articles of incorporation or other document of
18 organization adopted pursuant to section 83 or 93 of the state
19 housing development authority act of 1966, 1966 PA 346, MCL
20 125.1483 and 125.1493.

21 Sec. 705. **(1)** All provisions relating to the administration,
22 collection, and enforcement of this act and 1941 PA 122, MCL 205.1
23 to 205.31, apply to all persons required to withhold taxes and to
24 the taxes required to be withheld under this part. If the
25 department has reasonable grounds to believe that a person required
26 to withhold taxes under this part will not pay taxes withheld to
27 this state or, if applicable, to the community college, as
28 prescribed by this part, or to provide a more efficient
29 administration, the department may require that person to make the

1 return and pay to the department or, if applicable, to the
2 community college, the tax deducted and withheld at other than
3 monthly periods, or from time to time, or require that person to
4 deposit the tax in a bank approved by the department in a separate
5 account, in trust for the department or, if applicable, the
6 community college, and payable to the department or the community
7 college, and to keep the amount of the taxes in the account until
8 payment over to the department or the community college.

9 **(2) A qualified person that is required under section 703 to**
10 **withhold a tax under this act and that files a monthly return may**
11 **defer payment of qualified taxes until November 20, 2020 by**
12 **remitting them in installments as follows:**

13 **(a) Taxes otherwise due for March, April, and May must be paid**
14 **in 6 equal installments with 1 installment due on each of the**
15 **following dates:**

16 **(i) June 22, 2020.**

17 **(ii) July 20, 2020.**

18 **(iii) August 20, 2020.**

19 **(iv) September 21, 2020.**

20 **(v) October 20, 2020.**

21 **(vi) November 20, 2020.**

22 **(b) Taxes otherwise due for June 2020 must be paid in 5 equal**
23 **installments with 1 installment due on each of the following dates:**

24 **(i) July 20, 2020.**

25 **(ii) August 20, 2020.**

26 **(iii) September 21, 2020.**

27 **(iv) October 20, 2020.**

28 **(v) November 20, 2020.**

1 (c) Taxes otherwise due for July 2020 must be paid in 4 equal
2 installments with 1 installment due on each of the following dates:

3 (i) August 20, 2020.

4 (ii) September 21, 2020.

5 (iii) October 20, 2020.

6 (iv) November 20, 2020.

7 (d) Taxes otherwise due for August 2020 must be paid in 3
8 equal installments with 1 installment due on each of the following
9 dates:

10 (i) September 21, 2020.

11 (ii) October 20, 2020.

12 (iii) November 20, 2020.

13 (3) A qualified person that is required under section 703 to
14 withhold a tax under this act and that files a quarterly return
15 under this act may defer payment of qualified taxes by remitting
16 them in installments as follows:

17 (a) Taxes otherwise due for March of quarter 1 of 2020 must be
18 paid in 3 equal installments with 1 installment due on each of the
19 following dates:

20 (i) June 22, 2020.

21 (ii) September 21, 2020.

22 (iii) November 20, 2020.

23 (b) Taxes otherwise due for quarter 2 of 2020 must be paid in
24 3 equal installments with 1 installment due on each of the
25 following dates:

26 (i) July 20, 2020.

27 (ii) September 21, 2020.

28 (iii) November 20, 2020.

1 (c) Taxes otherwise due for July and August of quarter 3 of
2 2020 must be paid in 2 equal monthly installments with 1
3 installment due on each of the following dates:

4 (i) October 20, 2020.

5 (ii) November 20, 2020.

6 (4) Penalties or interest must not be added to qualified taxes
7 remitted pursuant to this section. If a qualified person intends to
8 defer payment of qualified taxes otherwise due under this act for
9 August 2020, the qualified person shall submit an estimate of the
10 taxes to be deferred for August 2020 to the department not later
11 than July 31, 2020 on a form prescribed by the department.

12 (5) As used in this section:

13 (a) "COVID-19 executive order" means an executive order issued
14 by the governor in response to the coronavirus (COVID-19) public
15 health emergency.

16 (b) "Qualified person" means a person whose business has been
17 negatively impacted as the result of a COVID-19 executive order. A
18 person's business is considered negatively impacted by a COVID-19
19 executive order if 1 or more of the following apply:

20 (i) As a result of a COVID-19 executive order, the person's
21 place of business is closed to ingress, egress, use, and occupancy
22 by members of the public.

23 (ii) The person's business involves assemblages of people that
24 are prohibited by a COVID-19 executive order.

25 (c) "Qualified taxes" means taxes otherwise due under this act
26 from a qualified person for March, April, May, June, July, and
27 August 2020.