HOUSE BILL NO. 5541

March 05, 2024, Introduced by Reps. Wendzel, Rigas, BeGole, Schuette, Beeler, Smit, Fox, Bierlein, Bezotte, Alexander, Thompson, Kunse, Harris, Wozniak, Borton, Markkanen, Johnsen, DeBoyer, Cavitt and Posthumus and referred to the Committee on Economic Development and Small Business.

A bill to amend 1967 PA 281, entitled

"Income tax act of 1967,"

by amending section 623 (MCL 206.623), as amended by 2021 PA 135.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 623. (1) Except as otherwise provided in this part, there is levied and imposed a corporate income tax on every taxpayer with business activity within this state or ownership interest or beneficial interest in a flow-through entity that has business activity in this state unless prohibited by 15 USC 381 to 384. The corporate income tax is imposed on the corporate income tax base, after allocation or apportionment to this state, at the rate of 6.0%.

(2) The corporate income tax base means a taxpayer's business income subject to the following adjustments, before allocation or apportionment, and the adjustment in subsection (4) after allocation or apportionment:

(a) Add interest income and dividends derived from obligations or securities of states other than this state, in the same amount that was excluded from federal taxable income, less the related portion of expenses not deducted in computing federal taxable income because of sections 265 and 291 of the internal revenue code.

(b) Add all taxes on or measured by net income including the tax imposed under this part to the extent that the taxes were deducted in arriving at federal taxable income including any direct or indirect allocated share of taxes paid by a flow-through entity under part 4.

(c) Add any carryback or carryover of a net operating loss to the extent deducted in arriving at federal taxable income.

(d) To the extent included in federal taxable income, deduct dividends and royalties received from persons other than United States persons and foreign operating entities, including, but not limited to, amounts determined under section 78 of the internal revenue code or sections 951 to 965 of the internal revenue code.

(e) Except as otherwise provided under this subdivision, to the extent deducted in arriving at federal taxable income, add any royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer's unitary business group. The addition of any royalty, interest, or other expense described under this subdivision is not required to be added if the taxpayer can demonstrate that the transaction has a nontax business purpose, is conducted with arm's-length pricing and rates and terms as applied in accordance with sections 482 and 1274(d) of the internal revenue code, and 1 of the following is true:

(*i*) The transaction is a pass through of another transaction between a third party and the related person with comparable rates and terms.

(*ii*) An addition would result in double taxation. For purposes of this subparagraph, double taxation exists if the transaction is subject to tax in another jurisdiction.

(*iii*) An addition would be unreasonable as determined by the state treasurer.

(*iv*) The related person recipient of the transaction is organized under the laws of a foreign nation which has in force a comprehensive income tax treaty with the United States.

(f) To the extent included in federal taxable income, deduct interest income derived from United States obligations.

(g) Eliminate all of the following:

(*i*) Income from producing oil and gas to the extent included in federal taxable income.

(*ii*) Expenses of producing oil and gas to the extent deducted in arriving at federal taxable income.

(h) For a qualified taxpayer, eliminate all of the following:

(*i*) Income derived from a mineral to the extent included in federal taxable income.

(*ii*) Expenses related to the income deductible under subparagraph (*i*) to the extent deducted in arriving at federal taxable income.

(i) To the extent deducted in arriving at federal taxable income, add any expenses deducted under section 162 of the internal revenue code that are attributable to diversity, equity, and inclusion related efforts.

(3) For purposes of subsection (2), the business income of a unitary business group is the sum of the business income of each person included in the unitary business group less any items of income and related deductions arising from transactions including dividends between persons included in the unitary business group.

(4) Deduct any available business loss incurred after December 31, 2011. As used in this subsection, "business loss" means a negative business income taxable amount after allocation or apportionment. For purposes of this subsection, a taxpayer that acquires the assets of another corporation in a transaction described under section 381(a)(1) or (2) of the internal revenue code may deduct any business loss attributable to that distributor or transferor corporation. The business loss shall be carried forward to the year immediately succeeding the loss year as an offset to the allocated or apportioned corporate income tax base, then successively to the next 9 taxable years following the loss year or until the loss is used up, whichever occurs first.

(5) As used in this section: ~~, "oil~~

(a) "Mineral" and "qualified taxpayer" mean those terms as defined in section 31b.

(b) "Oil and gas" means oil and gas that is subject to severance tax under 1929 PA 48, MCL 205.301 to 205.317.