

# INCOME TAX ACT OF 1967 (EXCERPT)

## Act 281 of 1967

### CHAPTER 11

#### **206.621 Nexus; "actively solicits" and "physical presence" defined.**

Sec. 621. (1) Except as otherwise provided in this part, a taxpayer has substantial nexus in this state and is subject to the tax imposed under this part if the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year, if the taxpayer actively solicits sales in this state and has gross receipts of \$350,000.00 or more sourced to this state, or if the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through 1 or more other flow-through entities, that has substantial nexus in this state.

(2) As used in this section:

(a) "Actively solicits" means either of the following:

(i) Speech, conduct, or activity that is purposefully directed at or intended to reach persons within this state and that explicitly or implicitly invites an order for a purchase or sale.

(ii) Speech, conduct, or activity that is purposefully directed at or intended to reach persons within this state that neither explicitly nor implicitly invites an order for a purchase or sale, but is entirely ancillary to requests for an order for a purchase or sale.

(b) "Physical presence" means any activity conducted by the taxpayer or on behalf of the taxpayer by the taxpayer's employee, agent, or independent contractor acting in a representative capacity. Physical presence does not include the activities of professionals providing services in a professional capacity or other service providers if the activity is not significantly associated with the taxpayer's ability to establish and maintain a market in this state.

**History:** Add. 2011, Act 38, Eff. Jan. 1, 2012;—Am. 2011, Act 187, Eff. Jan. 1, 2012.

#### **206.623 Corporate income tax; levy and imposition; base; adjustments; business income of unitary business group; "business loss" and "oil and gas" defined.**

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

**History:** Add. 2011, Act 38, Eff. Jan. 1, 2012;—Am. 2011, Act 312, Eff. Jan. 1, 2012;—Am. 2012, Act 414, Imd. Eff. Dec. 20, 2012;—Am. 2014, Act 13, Imd. Eff. Feb. 25, 2014;—Am. 2021, Act 135, Imd. Eff. Dec. 21, 2021.

**Compiler's note:** Enacting section 1 of Act 13 of 2014 provides:

"Enacting section 1. This amendatory act is retroactive and effective for tax years that begin after December 31, 2011."

Enacting section 1 of Act 135 of 2021 provides:

"Enacting section 1. This amendatory act is retroactive and intended to apply retroactively effective for tax years beginning on and after January 1, 2021."

## **206.625 Exemptions; corporate income tax base of foreign person; sales factor; "business income," "domiciled," and "foreign person" defined.**

Sec. 625. (1) Except as otherwise provided in this section, the following are exempt from the tax imposed by this part:

- (a) The United States, this state, other states, and the agencies, political subdivisions, and enterprises of the United States, this state, and other states.
- (b) A person who is exempt from federal income tax under the internal revenue code except the following:
  - (i) An organization included under section 501(c)(12) or 501(c)(16) of the internal revenue code.
  - (ii) An organization exempt under section 501(c)(4) of the internal revenue code that would be exempt under section 501(c)(12) of the internal revenue code except that it failed to meet the requirements in section 501(c)(12) that 85% or more of its income consist of amounts collected from members.
  - (iii) The tax base attributable to unrelated business activities giving rise to the unrelated business taxable income of an exempt person.
- (c) A foreign person that is domiciled in a member country of the North American free trade agreement is not subject to taxation under this part if the foreign person is domiciled in a subnational jurisdiction that does not impose an income tax on a similarly situated person domiciled in this state whose presence in the foreign country is the same as the foreign person's presence in the United States. If a qualifying foreign person is domiciled in a subnational jurisdiction that does not impose an income tax on businesses, but instead imposes some other type of subnational business tax, that foreign person is not subject to taxation under this part if that subnational business tax is not imposed on a similarly situated person domiciled in this state whose presence in the foreign country is the same as the foreign person's presence in the United States.
- (d) A person that qualifies as a domestic international sales corporation as defined in section 992 of the internal revenue code for the portion of the year that it has in effect a valid election to be treated as a domestic international sales corporation.

(e) A person that is a self-insurer group operating under an agreement entered pursuant to section 611(2) of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.611.

(2) Notwithstanding any other provision of this part to the contrary, a foreign person subject to tax under this part shall calculate its corporate income tax base under this section. Except as otherwise provided in this section, the corporate income tax base of a foreign person is subject to all adjustments and other provisions of this part. However, the corporate income tax base shall not include net income from sales of tangible personal property where title passes outside the United States.

(3) Except as otherwise provided in this section, the corporate income tax base of a foreign person includes the sum of business income and the adjustments under section 623 that are related to United States business activity.

(4) The sales factor for a foreign person is a fraction, the numerator of which is the taxpayer's total sales in this state during the tax year and the denominator of which is the taxpayer's total sales in the United States during the tax year. For purposes of this subsection, for sales of tangible personal property, only those sales where title passes inside the United States shall be used in the sales factor, and for sales of property other than tangible personal property, those sales shall be apportioned in accordance with chapter 14.

(5) As used in this section:

(a) "Business income" means, for a foreign person, gross income attributable to the taxpayer's United States business activity and gross income derived from sources within the United States minus the deductions allowed under the internal revenue code that are related to that gross income. Gross income includes the proceeds from sales shipped or delivered to any purchaser within the United States and for which title transfers within the United States; proceeds from services performed within the United States; and a pro rata proportion of the proceeds from services performed both within and outside the United States to the extent the recipient receives benefit of the services within the United States.

(b) "Domiciled" means the location of the headquarters of the trade or business from which the trade or business of the foreign person is principally managed and directed.

(c) "Foreign person" means a person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the internal revenue code.

**History:** Add. 2011, Act 38, Eff. Jan. 1, 2012;—Am. 2011, Act 175, Eff. Jan. 1, 2012;—Am. 2014, Act 15, Imd. Eff. Feb. 25, 2014;—Am. 2017, Act 216, Eff. Mar. 20, 2018.

**Compiler's note:** Enacting section 1 of Act 15 of 2014 provides:

"Enacting section 1. This amendatory act is retroactive and effective for tax years that begin after December 31, 2011."