

INCOME TAX ACT OF 1967 (EXCERPT)
Act 281 of 1967

CHAPTER 13

206.651 Definitions.

Sec. 651. As used in this chapter:

(a) "Billing address" means the location indicated in the books and records of the financial institution on the first day of the tax year or on a later date in the tax year when the customer relationship began as the address where any notice, statement, or bill relating to a customer's account is mailed.

(b) "Borrower is located in this state" or "credit card holder is located in this state" means a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state, or a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(c) "Commercial domicile" means the headquarters of the trade or business, that is the place from which the trade or business is principally managed and directed, or if a financial institution is organized under the laws of a foreign country, of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such financial institution's commercial domicile shall be deemed for the purposes of this chapter to be the state of the United States or the District of Columbia from which such financial institution's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the financial institution's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the tax year.

(d) "Credit card" means a credit, travel, or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a financial institution receives from a merchant's bank because 1 of the persons to whom the financial institution has issued a credit card has charged merchandise or services to the credit card.

(f) "FFIEC" means the federal financial institutions examination council established pursuant to section 1004 of the financial institutions regulatory and interest rate control act of 1978, Public Law 95-630, 12 USC 3303.

(g) "Financial institution" means any of the following:

(i) A bank holding company, a national bank, a state chartered bank, a state chartered savings bank, a federally chartered savings association, or a federally chartered farm credit system institution.

(ii) Any entity, other than an entity subject to the tax imposed under chapter 12, who is directly or indirectly owned by an entity described in subparagraph (i) and is a member of the unitary business group.

(iii) A unitary business group of entities described in subparagraph (i) or (ii), or both.

(h) "Gross business" means the sum of the following less transactions between those entities included in a unitary business group:

(i) Fees, commissions, or other compensation for financial services.

(ii) Net gains, not less than zero, from the sale of loans and other intangibles.

(iii) Net gains, not less than zero, from trading in stocks, bonds, or other securities.

(iv) Interest charged to customers for carrying debit balances of margin accounts.

(v) Interest and dividends received.

(vi) Any other gross proceeds resulting from the operation as a financial institution.

(i) "Loan" means any extension of credit resulting from direct negotiations between the financial institution and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include properties treated as loans under section 595 of the internal revenue code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest-bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit, or other mortgage-backed or asset-backed security, and other similar items.

(j) "Loan secured by real property" means that 50% or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(k) "Merchant discount" means the fee or negotiated discount charged to a merchant by the financial

institution for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the credit card holder.

(l) "Michigan obligations" means a bond, note, or other obligation issued by a governmental unit described in section 3 of the shared credit rating act, 1985 PA 227, MCL 141.1053.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Principal base of operations", with respect to transportation property, means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the principal base of operations means the place of more or less permanent nature from which the employee regularly does any of the following:

(i) Starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer.

(ii) Communicates with his or her customers or other persons.

(iii) Performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.

(o) "Real property owned" and "tangible personal property owned" mean real and tangible personal property respectively on which the financial institution may claim depreciation for federal income tax purposes or to which the financial institution holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real and tangible personal properties do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(p) "Regular place of business" means an office at which the financial institution carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the financial institution. The financial institution shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than 1 regular place of business and 1 such regular place of business is in this state and 1 such regular place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the financial institution where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the financial institution demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the financial institution.

(q) "Rolling stock" means railroad freight or passenger cars, locomotives, or other rail cars.

(r) "Syndication" means an extension of credit in which 2 or more persons finance the credit and each person is at risk only up to a specified percentage of the total extension of the credit or up to a specified dollar amount.

(s) "Top-tiered parent entity" means the highest level entity within the unitary business group that is required to file with a regulatory agency under the standards prescribed by the FFIEC.

(t) "Total equity capital" means that same amount reported by the financial institution or top-tiered parent entity, in the case of a unitary business group of financial institutions, and as reported for the tax year on any of the following forms or successor forms listed in this subdivision and designated by the FFIEC, that are filed with the office of the comptroller of the currency, the Federal Deposit Insurance Corporation, or the Federal Reserve System:

(i) The consolidated financial statement for holding companies, FR Y-9C.

(ii) The parent company only financial statements for small holding companies, FR Y-9SP.

(iii) To the extent that FR Y-9C or FR Y-9SP are not filed for the tax year, the consolidated reports of condition and income, call reports, FFIEC 031, 041, or 051.

(iv) A report similar in content and designated by the FFIEC.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, or trailers.

(v) "United States obligations" means all obligations of the United States exempt from taxation under 31 USC 3124(a) or exempt under the United States constitution or any federal statute, including the obligations of any instrumentality or agency of the United States that are exempt from state or local taxation under the United States constitution or any statute of the United States.

History: Add. 2011, Act 38, Eff. Jan. 1, 2012;—Am. 2011, Act 171, Eff. Jan. 1, 2012;—Am. 2018, Act 460, Imd. Eff. Dec. 27, 2018.

Compiler's note: Enacting section 1 of Act 460 of 2018 provides:

"Enacting section 1. (1) This amendatory act is effective for tax years beginning after December 31, 2018.

"(2) The provisions of section 655 of the income tax act of 1967, 1967 PA 281, MCL 206.655, as amended by this amendatory act, are curative and intended to clarify existing law and accurately reflect the interpretation and application of those provisions in accordance with the notice to taxpayers dated November 21, 2016, regarding 5-year averaging calculation of net equity capital for financial institutions."

206.653 Franchise tax.

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

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

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

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

(c) 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 as provided under this section or section 621.

(3) The tax under this chapter is in lieu of the tax levied and imposed under chapter 11 of this part.

History: Add. 2011, Act 38, Eff. Jan. 1, 2012;—Am. 2011, Act 183, Eff. Jan. 1, 2012.

206.655 Financial institution; tax base; total equity capital.

Sec. 655. (1) For a financial institution, the tax base is the total equity capital of the financial institution or the top-tiered parent entity in the case of a unitary business group of financial institutions, subject to the following deductions before allocation or apportionment:

(a) The average daily book value of United States obligations owned during the tax year by members of the unitary business group.

(b) The average daily book value of Michigan obligations owned during the tax year by members of the unitary business group.

(c) Subject to the limitation provided in this subdivision, the equity capital of a person that is subject to the tax imposed under chapter 12, not to exceed 125% of the minimum regulatory capitalization requirements of the member. For purposes of this subdivision, "equity capital" means equity capital as calculated in accordance with generally accepted accounting principles.

(2) For tax years beginning on or before December 31, 2020, the tax base shall be determined by adding the financial institution's equity capital as of the close of the current tax year and preceding 4 tax years and dividing the resulting sum by 5. If a financial institution has not been in existence for a period of 5 tax years, equity capital shall be determined by adding together the financial institution's equity capital for the number of tax years the financial institution has been in existence and dividing the resulting sum by the number of years the financial institution has been in existence. For tax years beginning after December 31, 2020, the tax base shall be determined as of the close of the tax year. For purposes of this section, a partial year shall be treated as a full year.

(3) For purposes of this section, each of the following applies:

(a) A change in identity, form, or place of organization of 1 financial institution shall be treated as if a single financial institution had been in existence for the entire tax year in which the change occurred and each tax year after the change.

(b) The combination of 2 or more financial institutions into 1 shall be treated as if the constituent financial institutions had been a single financial institution in existence for the entire tax year in which the combination occurred and each tax year after the combination, and the book values and adjustments for United States obligations and Michigan obligations of the constituent institutions shall be combined. A combination shall include any acquisition required to be accounted for by the surviving financial institution in accordance with generally accepted accounting principles or a statutory merger or consolidation.

(c) If a United States person included in a unitary business group of financial institutions or a financial institution combined return is subject to tax under chapter 11 or 12, any business income or equity capital attributable to that person shall be eliminated from the total equity capital of the unitary business group and any sales or gross business attributable to that person shall be eliminated from the apportionment formula under this chapter.

History: Add. 2011, Act 38, Eff. Jan. 1, 2012;—Am. 2018, Act 460, Imd. Eff. Dec. 27, 2018.

Compiler's note: Enacting section 1 of Act 460 of 2018 provides:

"Enacting section 1. (1) This amendatory act is effective for tax years beginning after December 31, 2018.

"(2) The provisions of section 655 of the income tax act of 1967, 1967 PA 281, MCL 206.655, as amended by this amendatory act, are curative and intended to clarify existing law and accurately reflect the interpretation and application of those provisions in accordance with the notice to taxpayers dated November 21, 2016, regarding 5-year averaging calculation of net equity capital for financial institutions."

206.657 Financial institution; business activities subject to tax within and outside of state; gross business factor.

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

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

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

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

(3) Except as otherwise provided in subsection (4), the gross business factor is a fraction, the numerator of which is the total gross business of the financial institution in this state during the tax year and the denominator of which is the total gross business of the financial institution everywhere during the tax year.

(4) Except as otherwise provided under this subsection, for a financial institution that is included in a unitary business group, gross business includes gross business in this state of every financial institution included in the unitary business group without regard to whether the financial institution has nexus in this state. Gross business between financial institutions included in a unitary business group must be eliminated in calculating the gross business factor.

History: Add. 2011, Act 38, Eff. Jan. 1, 2012.

206.659 Financial institution; gross business in state; determination.

Sec. 659. Gross business in this state of the financial institution is determined as follows:

(a) Receipts from credit card receivables including without limitation interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to credit card holders such as annual fees are in this state if the billing address of the credit card holder is located in this state.

(b) Credit card issuer's reimbursement fees are in this state if the billing address of the credit card holder is located in this state.

(c) Receipts from merchant discounts are in this state if the commercial domicile of the merchant is in this state.

(d) Loan servicing fees are in this state under any of the following circumstances:

(i) For a loan secured by real property, if the real property for which the loan is secured is in this state.

(ii) For a loan secured by real property, if the real property for which the loan is secured is located both within and without this state and 1 or more other states and more than 50% of the fair market value of the real property is located in this state.

(iii) For a loan secured by real property, if more than 50% of the fair market value of the real property for which the loan is secured is not located within any 1 state but the borrower is located in this state.

(iv) For a loan not secured by real property, the borrower is located in this state.

(e) Receipts from services are in this state if the recipient of the services receives all of the benefit of the services in this state. If the recipient of the services receives some of the benefit of the services in this state, the receipts are included in the numerator of the apportionment factor in proportion to the extent that the recipient receives benefit of the services in this state.

(f) Receipts from investment assets and activities and trading assets and activities, including interest and dividends, are in this state if the financial institution's customer is in this state. If the location of the financial institution's customer cannot be determined, both of the following apply:

(i) Interest, dividends, and other income from investment assets and activities and from trading assets and activities, including, but not limited to, investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. Interest

from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. The amount of receipts and other income from investment assets and activities is in this state if assets are assigned to a regular place of business of the taxpayer within this state.

(ii) The amount of receipts from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts otherwise sourced in this section, is in this state if the assets are assigned to a regular place of business of the taxpayer within this state.

(g) Interest charged to customers for carrying debit balances on margin accounts without deduction of any costs incurred in carrying the accounts is in this state if the customer is located in this state.

(h) Interest from loans secured by real property is in this state if the property is located in this state, if the property is located both within this state and 1 or more other states and more than 50% of the fair market value of the real property is located in this state, or if more than 50% of the fair market value of the real property is not located within any 1 state but the borrower is located in this state.

(i) Interest from loans not secured by real property is in this state if the borrower is located in this state.

(j) Net gains from the sale of loans secured by real property or mortgage service rights relating to real property are in this state if the property is in this state, if the property is located both within this state and 1 or more other states and more than 50% of the fair market value of the real property is located within this state, or if more than 50% of the fair market value of the real property is not located in any 1 state but the borrower is located in this state.

(k) Net gains from the sale of loans not secured by real property or any other intangible assets are in this state if the depositor or borrower is located in this state.

(l) Receipts from the lease of real property are in this state if the property is located in this state.

(m) Receipts from the lease of tangible personal property are in this state if the property is located in this state when it is first placed in service by the lessee.

(n) Receipts from the lease of transportation tangible personal property are in this state if the property is used in this state or if the extent of use of the property within this state cannot be determined but the property has its principal base of operations within this state.

History: Add. 2011, Act 38, Eff. Jan. 1, 2012.