SENATE BILL No. 687

August 22, 2007, Introduced by Senator GILBERT and referred to the Committee on Committee of the Whole.

A bill to amend 2007 PA 36, entitled

"Michigan business tax act,"

by amending section 201 (MCL 208.1201).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 201. (1) Except as otherwise provided in this act, there is levied and imposed a business income tax on every taxpayer with business activity within this state unless prohibited by 15 USC 381 to 384. The business income tax is imposed on the business income tax base, after allocation or apportionment to this state, at the rate of 4.95%.

(2) The business 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:

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(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 and the tax imposed under this act to the extent the taxes were deducted in arriving at federal taxable income.

(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 964 of the internal revenue code.

(e) To the extent included in federal taxable income, add the loss or subtract the income from the business income tax base that is attributable to another entity whose business activities are taxable under this section or would be subject to the tax under this section if the business activities were in this state.

(f) 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 other than avoidance of this tax, 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 satisfies 1 of the following:

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

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

(*iii*) Is unreasonable as determined by the treasurer, and the taxpayer agrees that the addition would be unreasonable based on the taxpayer's facts and circumstances.

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

(h) To the extent included in federal taxable income, deduct any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer except to the extent that those net earnings represent a reasonable return on capital.

(I) FOR THE FIRST TAX PERIOD ENDING ON OR AFTER JULY 12, 2007, IF THE BOOK-TAX DIFFERENCE RESULTS IN A DEFERRED LIABILITY, DEDUCT 10% OF THE INCREMENTAL CHANGE IN THE BOOK-TAX DIFFERENCE FOR EACH QUALIFYING ASSET, FOR EACH OF THE SUCCESSIVE 10 TAX YEARS BEGINNING WITH THE 2013 TAX YEAR. IF THE ADJUSTMENT UNDER THIS SUBDIVISION IS

GREATER THAN THE TAXPAYER'S BUSINESS INCOME TAX BASE, ANY ADJUSTMENT THAT IS UNUSED MAY BE CARRIED FORWARD AND APPLIED AS AN ADJUSTMENT TO THE TAXPAYER'S BUSINESS INCOME BEFORE APPORTIONMENT IN FUTURE YEARS. AS USED IN THIS SUBDIVISION:

(*i*) "BOOK-TAX DIFFERENCE" MEANS THE DIFFERENCE, IF ANY, BETWEEN THE TAXPAYER'S QUALIFYING ASSET'S NET BOOK VALUE SHOWN ON THE TAXPAYER'S BOOKS AND RECORDS FOR THE FIRST TAX PERIOD ENDING ON OR AFTER JULY 12, 2007, AND THE QUALIFYING ASSET'S ADJUSTED FEDERAL TAX BASIS FOR THE FIRST TAX PERIOD ENDING ON OR AFTER JULY 12, 2007.

(*ii*) "QUALIFYING ASSET" MEANS ANY ASSET SHOWN ON THE TAXPAYER'S BOOKS AND RECORDS FOR THE FIRST TAX PERIOD ENDING ON OR AFTER JULY 12, 2007, IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

(3) For purposes of subsection (2), the business income of a unitary business group is the sum of the business income of each person, other than a foreign operating entity or a person subject to the tax imposed under chapter 2A or 2B, 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, 2007. As used in this subsection, "business loss" means a negative business income taxable amount after allocation or apportionment. The business loss shall be carried forward to the year immediately succeeding the loss year as an offset to the allocated or apportioned business 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, but for not more than 10 taxable years after the loss year.

Enacting section 1. This amendatory act takes effect January 1, 2008.