

SENATE BILL No. 473

Introduced by Senators BRANDENBURG and PAPPAGEORGE and referred to the Committee on Finance.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 703 (MCL 206.703), as amended by 2013 PA 15.

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
8 issued by a life insurance company. Withholding shall be calculated

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

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

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

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

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

1 corporation and separately reported to the members. As used in this
2 subsection, "sales" means that term as defined in section 609 and
3 sales in this state is determined as provided in sections 665 and
4 669. All of the taxes withheld under this section shall accrue to
5 the state on April 15, July 15, and October 15 of the flow-through
6 entity's tax year and January 15 of the following year, except a
7 flow-through entity that is not on a calendar year basis shall
8 substitute the appropriate due dates in the flow-through entity's
9 fiscal year that correspond to those in a calendar year.

10 Withholding for each period shall be equal to 1/4 of the total
11 withholding calculated on the distributive share of business income
12 that is reasonably expected to accrue during the tax year of the
13 flow-through entity.

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

1 equal to 1/4 of the total withholding calculated on the
2 distributive share of business income that is reasonably expected
3 to accrue during the tax year of the flow-through entity.

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

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

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

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

1 (10) Every publicly traded partnership that has equity
2 securities registered with the securities and exchange commission
3 under section 12 of title I of the securities and exchange act of
4 1934, 15 USC 78l, shall not be subject to withholding.

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

25 (12) A person required by this section to deduct and withhold
26 taxes on compensation, a share of income available for distribution
27 on which withholding is required under subsection (3), (4), or (5),

1 winnings on which withholding is required under subsection (6), or
2 a payoff price on which withholding is required under subsection
3 (7) holds the amount of tax withheld as a trustee for this state
4 and is liable for the payment of the tax to this state or, if
5 applicable, to the community college and is not liable to any
6 individual for the amount of the payment.

7 (13) An employer in this state is not required to deduct and
8 withhold a tax on the compensation paid to a nonresident individual
9 employee, who, under section 256, may claim a tax credit equal to
10 or in excess of the tax estimated to be due for the tax year or is
11 exempted from liability for the tax imposed by this act. In each
12 tax year, the nonresident individual shall furnish to the employer,
13 on a form approved by the department, a verified statement of
14 nonresidence.

15 (14) A person required to withhold a tax under this act, by
16 the fifteenth day of the following month, shall provide the
17 department with a copy of any exemption certificate on which the
18 employee, member, or person subject to withholding under subsection
19 (6) or (7) claims more than 9 personal or dependency exemptions,
20 claims a status that exempts the employee, member, or person
21 subject to withholding under subsection (6) or (7) from withholding
22 under this section.

23 (15) A person who disburses annuity payments pursuant to the
24 terms of a qualified charitable gift annuity is not required to
25 deduct and withhold a tax on those payments as prescribed under
26 subsection (1). As used in this subsection, "qualified charitable
27 gift annuity" means an annuity described under section 501(m)(5) of

1 the internal revenue code and issued by an organization exempt
2 under section 501(c)(3) of the internal revenue code.

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

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

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

13 (ii) Pay or withhold the tax required under this act on the
14 distributive share of the business income received from any flow-
15 through entity in which the member has an ownership or beneficial
16 interest, directly or indirectly through 1 or more other flow-
17 through entities.

18 (iii) Submit to the taxing jurisdiction of this state for
19 purposes of collection of the tax under this act together with
20 related interest and penalties under 1941 PA 122, MCL 205.1 to
21 205.31, imposed on the member with respect to the distributive
22 share of the business income of that member.

23 (b) The department may require the member to file the
24 exemption certificate with the department and provide a copy to the
25 flow-through entity.

26 (c) The department may require a flow-through entity that
27 receives an exemption certificate to attach a copy of the exemption

1 certificate to the annual reconciliation return as required by
2 section 711. A flow-through entity that is entirely exempt from the
3 withholding requirements of subsection (4) or (5) by this
4 subsection may be required to furnish a copy of the exemption
5 certificate in another manner prescribed by the department.

6 (d) A copy of the exemption certificate shall be retained by
7 the member and flow-through entity and made available to the
8 department upon request. Any copy of the exemption certificate
9 shall be maintained in a format and for the period required by 1941
10 PA 122, MCL 205.1 to 205.31.

11 (17) The department may revoke the election provided for in
12 subsection (16) if it determines that the member or a flow-through
13 entity is not abiding by the terms of the exemption certificate or
14 the requirements of subsection (16). If the department does revoke
15 the election option under subsection (16), the department shall
16 notify the affected flow-through entity that withholding is
17 required on the member under subsection (4) or (5), beginning 60
18 days after notice of revocation is received.

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

25 **(19) NOTWITHSTANDING THE WITHHOLDING REQUIREMENTS OF**
26 **SUBSECTION (3), (4), OR (5), A FLOW-THROUGH ENTITY IS NOT REQUIRED**
27 **TO COMPLY WITH THOSE WITHHOLDING REQUIREMENTS TO THE EXTENT THAT**

1 THE WITHHOLDING WOULD VIOLATE ANY OF THE FOLLOWING:

2 (A) HOUSING ASSISTANCE PAYMENT PROGRAMS DISTRIBUTION
3 RESTRICTIONS UNDER 24 CFR PART 880, 881, 883, OR 891.

4 (B) RURAL HOUSING SERVICE RETURN ON INVESTMENT RESTRICTIONS
5 UNDER 7 CFR 3560.68 OR 3560.305.

6 (C) ARTICLES OF INCORPORATION OR OTHER DOCUMENT OF
7 ORGANIZATION ADOPTED PURSUANT TO SECTION 83 OR 93 OF THE STATE
8 HOUSING DEVELOPMENT AUTHORITY ACT OF 1966, 1966 PA 346, MCL
9 125.1483 AND 125.1493.