

**SUBSTITUTE FOR
HOUSE BILL NO. 4879**

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending sections 12, 607, and 623 (MCL 206.12, 206.607, and
206.623), sections 12 and 607 as amended by 2018 PA 38 and section
623 as amended by 2014 PA 13.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12. (1) "Flow-through entity" means an S corporation,
2 partnership, limited partnership, limited liability partnership, or
3 limited liability company. Flow-through entity does not include a
4 publicly traded partnership as that term is defined in section 7704
5 of the internal revenue code that has equity securities registered
6 with the securities and exchange commission under section 12 of
7 title I of the securities exchange act of 1934, 15 USC 78l.



1 (2) "Gross income" means gross income as defined in the
2 internal revenue code.

3 (3) "Internal revenue code" means the United States internal
4 revenue code of 1986 in effect on January 1, ~~2018~~**2021** or, at the
5 option of the taxpayer, in effect for the tax year.

6 (4) "Member of a flow-through entity" means a shareholder of
7 an S corporation; a partner in a partnership or limited
8 partnership; or a member of a limited liability company.

9 (5) "Nonresident member" means any of the following that is a
10 member of a flow-through entity:

11 (a) An individual who is not domiciled in this state.

12 (b) A nonresident estate or trust.

13 (c) A flow-through entity with a nonresident member.

14 Sec. 607. (1) "Federal taxable income" means taxable income as
15 defined in section 63 of the internal revenue code, except that
16 federal taxable income shall be calculated as if section 168(k) and
17 section 199 of the internal revenue code were not in effect.

18 (2) "Flow-through entity" means an entity that for the
19 applicable tax year is treated as a subchapter S corporation under
20 section 1362(a) of the internal revenue code, a general
21 partnership, a trust, a limited partnership, a limited liability
22 partnership, or a limited liability company, that for the tax year
23 is not taxed as a corporation for federal income tax purposes.
24 Flow-through entity does not include any entity disregarded under
25 section 699.

26 (3) "Foreign operating entity" means a United States
27 corporation that satisfies each of the following:

28 (a) Would otherwise be a part of a unitary business group that
29 has at least 1 corporation included in the unitary business group



1 that is taxable in this state.

2 (b) Has substantial operations outside the United States, the
3 District of Columbia, any territory or possession of the United
4 States except for the Commonwealth of Puerto Rico, or a political
5 subdivision of any of the foregoing.

6 (c) At least 80% of its income is active foreign business
7 income as defined in section ~~861(e)(1)(B)~~**871 (l) (1) (B) (ii)** of the
8 internal revenue code.

9 (4) "Gross receipts" means the entire amount received by the
10 taxpayer from any activity whether in intrastate, interstate, or
11 foreign commerce carried on for direct or indirect gain, benefit,
12 or advantage to the taxpayer or to others except for the following:

13 (a) Proceeds from sales by a principal that the taxpayer
14 collects in an agency capacity solely on behalf of the principal
15 and delivers to the principal.

16 (b) Amounts received by the taxpayer as an agent solely on
17 behalf of the principal that are expended by the taxpayer for any
18 of the following:

19 (i) The performance of a service by a third party for the
20 benefit of the principal that is required by law to be performed by
21 a licensed person.

22 (ii) The performance of a service by a third party for the
23 benefit of the principal that the taxpayer has not undertaken a
24 contractual duty to perform.

25 (iii) Principal and interest under a mortgage loan or land
26 contract, lease or rental payments, or taxes, utilities, or
27 insurance premiums relating to real or personal property owned or
28 leased by the principal.

29 (iv) A capital asset of a type that is, or under the internal



1 revenue code will become, eligible for depreciation, amortization,
2 or accelerated cost recovery by the principal for federal income
3 tax purposes, or for real property owned or leased by the
4 principal.

5 (v) Property not described under subparagraph (iv) purchased by
6 the taxpayer on behalf of the principal and that the taxpayer does
7 not take title to or use in the course of performing its
8 contractual business activities.

9 (vi) Fees, taxes, assessments, levies, fines, penalties, or
10 other payments established by law that are paid to a governmental
11 entity and that are the legal obligation of the principal.

12 (c) Amounts that are excluded from gross income of a foreign
13 corporation engaged in the international operation of aircraft
14 under section 883(a) of the internal revenue code.

15 (d) Amounts received by an advertising agency used to acquire
16 advertising media time, space, production, or talent on behalf of
17 another person.

18 (e) Notwithstanding any other provision of this section,
19 amounts received by a taxpayer that manages real property owned by
20 the taxpayer's client that are deposited into a separate account
21 kept in the name of the taxpayer's client and that are not
22 reimbursements to the taxpayer and are not indirect payments for
23 management services that the taxpayer provides to that client.

24 (f) Proceeds from the taxpayer's transfer of an account
25 receivable if the sale that generated the account receivable was
26 included in gross receipts for federal income tax purposes. This
27 subdivision does not apply to a taxpayer that during the tax year
28 both buys and sells any receivables.

29 (g) Proceeds from any of the following:



- 1 (i) The original issue of stock or equity instruments.
- 2 (ii) The original issue of debt instruments.
- 3 (h) Refunds from returned merchandise.
- 4 (i) Cash and in-kind discounts.
- 5 (j) Trade discounts.
- 6 (k) Federal, state, or local tax refunds.
- 7 (l) Security deposits.
- 8 (m) Payment of the principal portion of loans.
- 9 (n) Value of property received in a like-kind exchange.
- 10 (o) Proceeds from a sale, transaction, exchange, involuntary
 11 conversion, or other disposition of tangible, intangible, or real
 12 property that is a capital asset as defined in section 1221(a) of
 13 the internal revenue code or land that qualifies as property used
 14 in the trade or business as defined in section 1231(b) of the
 15 internal revenue code, less any gain from the disposition to the
 16 extent that gain is included in federal taxable income.
- 17 (p) The proceeds from a policy of insurance, a settlement of a
 18 claim, or a judgment in a civil action less any proceeds under this
 19 subdivision that are included in federal taxable income.
- 20 (5) "Insurance company" means an authorized insurer as defined
 21 in section 108 of the insurance code of 1956, 1956 PA 218, MCL
 22 500.108. Insurance company does not include a health maintenance
 23 organization authorized under chapter 35 of the insurance code of
 24 1956, 1956 PA 218, MCL 500.3501 to 500.3573.
- 25 (6) "Internal revenue code" means the United States internal
 26 revenue code of 1986 in effect on January 1, ~~2018~~2021 or, at the
 27 option of the taxpayer, in effect for the tax year.
- 28 (7) "Member", when used in reference to a flow-through entity,
 29 means a shareholder of a subchapter S corporation, a partner in a



1 general partnership, a limited partnership, or a limited liability
2 partnership, a member of a limited liability company, or a
3 beneficiary of a trust that is a flow-through entity.

4 Sec. 623. (1) Except as otherwise provided in this part, there
5 is levied and imposed a corporate income tax on every taxpayer with
6 business activity within this state or ownership interest or
7 beneficial interest in a flow-through entity that has business
8 activity in this state unless prohibited by 15 USC 381 to 384. The
9 corporate income tax is imposed on the corporate income tax base,
10 after allocation or apportionment to this state, at the rate of
11 6.0%.

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

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

22 (b) Add all taxes on or measured by net income including the
23 tax imposed under this part to the extent that the taxes were
24 deducted in arriving at federal taxable income.

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

27 (d) To the extent included in federal taxable income, deduct
28 dividends and royalties received from persons other than United
29 States persons and foreign operating entities, including, but not



1 limited to, amounts determined under section 78 of the internal
2 revenue code or sections 951 to ~~964~~ **965** of the internal revenue
3 code.

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

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

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

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

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

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

28 (g) ~~For tax years beginning after December 31, 2011, eliminate~~
29 **Eliminate** all of the following:



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

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

5 (h) ~~For tax years beginning after December 31, 2012, for~~ **For** a
6 qualified taxpayer, eliminate all of the following:

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

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

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

17 (4) Deduct any available business loss incurred after December
18 31, 2011. As used in this subsection, "business loss" means a
19 negative business income taxable amount after allocation or
20 apportionment. For purposes of this subsection, a taxpayer that
21 acquires the assets of another corporation in a transaction
22 described under section 381(a)(1) or (2) of the internal revenue
23 code may deduct any business loss attributable to that distributor
24 or transferor corporation. ~~The~~ **Except as otherwise provided under**
25 **this subsection, the** business loss shall be carried forward to the
26 year immediately succeeding the loss year as an offset to the
27 allocated or apportioned corporate income tax base, then
28 successively to the next 9 taxable years following the loss year or
29 until the loss is used up, whichever occurs first. **Notwithstanding**



1 the limitations period under section 27a(2) of 1941 PA 122, MCL
2 205.27a, for business loss incurred in a tax year beginning after
3 December 31, 2017 and before January 1, 2021, a taxpayer may elect
4 to carryback that business loss to each of the 5 tax years
5 preceding the tax year of that business loss. The election to
6 carryback a business loss is irrevocable and shall be made in a
7 form and manner as prescribed by the department. The taxpayer shall
8 make the election under this subsection before the filing due date
9 of the taxpayer's annual return, including extensions, for the
10 first tax year that begins after December 31, 2020.

11 (5) As used in this section, "oil and gas" means oil and gas
12 that is subject to severance tax under 1929 PA 48, MCL 205.301 to
13 205.317.

14 Enacting section 1. Section 623(2)(d) of the income tax act of
15 1967, 1967 PA 281, MCL 206.623, as amended by this amendatory act,
16 is curative and intended to clarify existing law and accurately
17 reflect the interpretation and application of that provision in
18 accordance with the notice to taxpayers dated July 2, 2018
19 regarding foreign income repatriation and shall be applied
20 retroactively in accordance with the notice to taxpayers dated July
21 2, 2018.

