

HOUSE BILL No. 4968

September 13, 2011, Introduced by Rep. Nesbitt and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 607 (MCL 206.607), as added by 2011 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (2) "Flow-through entity" means an entity that for the
6 applicable tax year is treated as a subchapter S corporation under
7 section 1362(a) of the internal revenue code, a general
8 partnership, a trust, a limited partnership, a limited liability
9 partnership, or a limited liability company, that for the tax year
10 is not taxed as a corporation for federal income tax purposes.

11 (3) "Foreign operating entity" means a United States ~~person~~

1 **CORPORATION** that satisfies each of the following:

2 (a) Would otherwise be a part of a unitary business group that
3 has at least 1 ~~person~~-**CORPORATION** included in the unitary business
4 group that is taxable in this state.

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

9 (c) At least 80% of its income is active foreign business
10 income as defined in section 861(c)(1)(B) of the internal revenue
11 code.

12 (4) "Gross receipts" means the entire amount received by the
13 taxpayer as determined by using the taxpayer's method of accounting
14 used for federal income tax purposes, less any amount deducted as
15 bad debt for federal income tax purposes from any activity whether
16 in intrastate, interstate, or foreign commerce carried on for
17 direct or indirect gain, benefit, or advantage to the taxpayer or
18 to others except for the following:

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

22 (b) Amounts received by the taxpayer as an agent solely on
23 behalf of the principal that are expended by the taxpayer for any
24 of the following:

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

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

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

8 (iv) A capital asset of a type that is, or under the internal
9 revenue code will become, eligible for depreciation, amortization,
10 or accelerated cost recovery by the principal for federal income
11 tax purposes, or for real property owned or leased by the
12 principal.

13 (v) Property not described under subparagraph (iv) that is
14 purchased by the taxpayer on behalf of the principal and that the
15 taxpayer does not take title to or use in the course of performing
16 its contractual business activities.

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

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

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

26 (e) Amounts received by a newspaper to acquire advertising
27 space not owned by that newspaper in another newspaper on behalf of

1 another person. This subdivision does not apply to any
2 consideration received by the taxpayer for acquiring that
3 advertising space.

4 (f) Notwithstanding any other provision of this section,
5 amounts received by a taxpayer that manages real property owned by
6 a third party that are deposited into a separate account kept in
7 the name of that third party and that are not reimbursements to the
8 taxpayer and are not indirect payments for management services that
9 the taxpayer provides to that third party.

10 (g) Proceeds from the taxpayer's transfer of an account
11 receivable if the sale that generated the account receivable was
12 included in gross receipts for federal income tax purposes. This
13 subdivision does not apply to a taxpayer that during the tax year
14 both buys and sells any receivables.

15 (h) Proceeds from any of the following:

16 (i) The original issue of stock or equity instruments or equity
17 issued by a regulated investment company as that term is defined
18 under section 851 of the internal revenue code.

19 (ii) The original issue of debt instruments.

20 (i) Refunds from returned merchandise.

21 (j) Cash and in-kind discounts.

22 (k) Trade discounts.

23 (l) Federal, state, or local tax refunds.

24 (m) Security deposits.

25 (n) Payment of the principal portion of loans.

26 (o) Value of property received in a like-kind exchange.

27 (p) Proceeds from a sale, transaction, exchange, involuntary

1 conversion, maturity, redemption, repurchase, recapitalization, or
2 other disposition or reorganization of tangible, intangible, or
3 real property, less any gain from the disposition or reorganization
4 to the extent that the gain is included in the taxpayer's federal
5 taxable income, if the property satisfies 1 or more of the
6 following:

7 (i) The property is a capital asset as defined in section
8 1221(a) of the internal revenue code.

9 (ii) The property is land that qualifies as property used in
10 the trade or business as defined in section 1231(b) of the internal
11 revenue code.

12 (iii) The property is used in a hedging transaction entered into
13 by the taxpayer in the normal course of the taxpayer's trade or
14 business primarily to manage the risk of exposure to foreign
15 currency fluctuations that affect assets, liabilities, profits,
16 losses, equity, or investments in foreign operations; interest rate
17 fluctuations; or commodity price fluctuations. For purposes of this
18 subparagraph, the actual transfer of title of real or tangible
19 personal property to another person is not a hedging transaction.
20 Only the overall net gain from the hedging transactions entered
21 into during the tax year is included in gross receipts. As used in
22 this subparagraph, "hedging transaction" means that term as defined
23 under section 1221 of the internal revenue code regardless of
24 whether the transaction was identified by the taxpayer as a hedge
25 for federal income tax purposes, provided, however, that
26 transactions excluded under this subparagraph and not identified as
27 a hedge for federal income tax purposes shall be identifiable to

1 the department by the taxpayer as a hedge in its books and records.

2 (iv) The property is investment and trading assets managed as
3 part of the person's treasury function. For purposes of this
4 subparagraph, a person principally engaged in the trade or business
5 of purchasing and selling investment and trading assets is not
6 performing a treasury function. Only the overall net gain from the
7 treasury function incurred during the tax year is included in gross
8 receipts. As used in this subparagraph, "treasury function" means
9 the pooling and management of investment and trading assets for the
10 purpose of satisfying the cash flow or liquidity needs of the
11 taxpayer's trade or business.

12 (q) The proceeds from a policy of insurance, a settlement of a
13 claim, or a judgment in a civil action less any proceeds under this
14 subdivision that are included in federal taxable income.

15 (r) For a sales finance company, as defined in section 2 of
16 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
17 492.102, and directly or indirectly owned in whole or in part by a
18 motor vehicle manufacturer as of January 1, 2008, and for a person
19 that is a broker or dealer as defined under section 78c(a)(4) or
20 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
21 included in the unitary business group of that broker or dealer
22 that buys and sells for its own account, contracts that are subject
23 to the commodity exchange act, 7 USC 1 to 27f, amounts realized
24 from the repayment, maturity, sale, or redemption of the principal
25 of a loan, bond, or mutual fund, certificate of deposit, or similar
26 marketable instrument provided such instruments are not held as
27 inventory.

1 (s) For a sales finance company, as defined in section 2 of
2 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
3 492.102, and directly or indirectly owned in whole or in part by a
4 motor vehicle manufacturer as of January 1, 2008, and for a person
5 that is a broker or dealer as defined under section 78c(a)(4) or
6 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
7 included in the unitary business group of that broker or dealer
8 that buys and sells for its own account, contracts that are subject
9 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
10 received under a repurchase agreement or other transaction properly
11 characterized as a loan.

12 (t) For a mortgage company, proceeds representing the
13 principal balance of loans transferred or sold in the tax year. For
14 purposes of this subdivision, "mortgage company" means a person
15 that is licensed under the mortgage brokers, lenders, and servicers
16 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the
17 secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and
18 has greater than 90% of its revenues, in the ordinary course of
19 business, from the origination, sale, or servicing of residential
20 mortgage loans.

21 (u) For a professional employer organization, any amount
22 charged by a professional employer organization that represents the
23 actual cost of wages and salaries, benefits, worker's compensation,
24 payroll taxes, withholding, or other assessments paid to or on
25 behalf of a covered employee by the professional employer
26 organization under a professional employer arrangement.

27 (v) Any invoiced items used to provide more favorable floor

1 plan assistance to a person subject to the tax imposed under this
2 act than to a person not subject to this tax and paid by a
3 manufacturer, distributor, or supplier.

4 (w) For an individual, estate, or other person organized for
5 estate or gift planning purposes, amounts received other than those
6 from transactions, activities, and sources in the regular course of
7 the taxpayer's trade or business. For purposes of this subdivision,
8 all of the following apply:

9 (i) Amounts received from transactions, activities, and sources
10 in the regular course of the taxpayer's business include, but are
11 not limited to, the following:

12 (A) Receipts from tangible and intangible property if the
13 acquisition, rental, lease, management, or disposition of the
14 property constitutes integral parts of the taxpayer's regular trade
15 or business operations.

16 (B) Receipts received in the course of the taxpayer's trade or
17 business from stock and securities of any foreign or domestic
18 corporation and dividend and interest income.

19 (C) Receipts derived from isolated sales, leases, assignments,
20 licenses, divisions, or other infrequently occurring dispositions,
21 transfers, or transactions involving tangible, intangible, or real
22 property if the property is or was used in the taxpayer's trade or
23 business operation.

24 (D) Receipts derived from the sale of an interest in a
25 business that constitutes an integral part of the taxpayer's
26 regular trade or business.

27 (E) Receipts derived from the lease or rental of real

1 property.

2 (ii) Receipts excluded from gross receipts include, but are not
3 limited to, the following:

4 (A) Receipts derived from investment activity, including
5 interest, dividends, royalties, and gains from an investment
6 portfolio or retirement account, if the investment activity is not
7 part of the taxpayer's trade or business.

8 (B) Receipts derived from the disposition of tangible,
9 intangible, or real property held for personal use and enjoyment,
10 such as a personal residence or personal assets.

11 (x) Receipts derived from investment activity by a person that
12 is organized exclusively to conduct investment activity and that
13 does not conduct investment activity for any person other than an
14 individual or a person related to that individual or by a common
15 trust fund established under the collective investment funds act,
16 1941 PA 174, MCL 555.101 to 555.113. For purposes of this
17 subdivision, a person is related to an individual if that person is
18 a spouse, brother or sister, whether of the whole or half blood or
19 by adoption, ancestor, lineal descendent of that individual or
20 related person, or a trust benefiting that individual or 1 or more
21 persons related to that individual.

22 (y) Interest income and dividends derived from obligations or
23 securities of the United States government, this state, or any
24 governmental unit of this state. As used in this subdivision,
25 "governmental unit" means that term as defined in section 3 of the
26 shared credit rating act, 1985 PA 227, MCL 141.1053.

27 (z) Dividends and royalties received or deemed received from a

1 foreign operating entity or a person other than a United States
2 person, including, but not limited to, the amounts determined under
3 section 78 of the internal revenue code and sections 951 to 964 of
4 the internal revenue code.

5 (aa) Each of the following:

6 (i) Sales or use taxes collected from or reimbursed by a
7 consumer or other taxes the taxpayer collected directly from or was
8 reimbursed by a purchaser and remitted to a local, state, or
9 federal tax authority.

10 (ii) In the case of receipts from the sale of cigarettes or
11 tobacco products by a wholesale dealer, retail dealer, distributor,
12 manufacturer, or seller, an amount equal to the federal and state
13 excise taxes paid by any person on or for such cigarettes or
14 tobacco products under subtitle E of the internal revenue code or
15 other applicable state law.

16 (iii) In the case of receipts from the sale of motor fuel by a
17 person with a motor fuel tax license or a retail dealer, an amount
18 equal to federal and state excise taxes paid by any person on such
19 motor fuel under section 4081 of the internal revenue code or under
20 other applicable state law.

21 (iv) In the case of receipts from the sale of beer, wine, or
22 intoxicating liquor by a person holding a license to sell,
23 distribute, or produce those products, an amount equal to federal
24 and state excise taxes paid by any person on or for such beer,
25 wine, or intoxicating liquor under subtitle E of the internal
26 revenue code or other applicable state law.

27 (v) In the case of receipts from the sale of communication,

1 video, internet access and related services and equipment, any
2 government imposed tax, fee, or other imposition in the nature of a
3 tax or fee required by law, ordinance, regulation, ruling, or other
4 legal authority and authorized to be charged on a customer's bill
5 or invoice.

6 (vi) In the case of receipts from the sale of electricity,
7 natural gas, or other energy source, any government imposed tax,
8 fee, or other imposition in the nature of a tax or fee required by
9 law, ordinance, regulation, ruling, or other legal authority and
10 authorized to be charged on a customer's bill or invoice.

11 (vii) Any deposit required under any of the following:

12 (A) 1976 IL 1, MCL 445.571 to 445.576.

13 (B) R 436.1629 of the Michigan administrative code.

14 (C) R 436.1723a of the Michigan administrative code.

15 (D) Any substantially similar beverage container deposit law
16 of another state.

17 (viii) An excise tax collected pursuant to the airport parking
18 tax act, 1987 PA 248, MCL 207.371 to 207.383, collected from or
19 reimbursed by a consumer and remitted as provided in the airport
20 parking tax act, 1987 PA 248, MCL 207.371 to 207.383.

21 (bb) For a regulated investment company as that term is
22 defined under section 851 of the internal revenue code, receipts
23 derived from investment activity by that regulated investment
24 company.

25 (cc) For fiscal years that begin after September 30, 2009,
26 unless the state budget director certifies to the state treasurer
27 by January 1 of that fiscal year that the federally certified rates

1 for actuarial soundness required under 42 CFR 438.6 and that are
2 specifically developed for Michigan's health maintenance
3 organizations that hold a contract with this state for medicaid
4 services provide explicit adjustment for their obligations required
5 for payment of the tax under this act, amounts received by the
6 taxpayer during that fiscal year for medicaid premium or
7 reimbursement of costs associated with service provided to a
8 medicaid recipient or beneficiary.

9 (dd) For a taxpayer that provides health care management
10 consulting services, amounts received by the taxpayer as fees from
11 its clients that are expended by the taxpayer to reimburse those
12 clients for labor and nonlabor services that are paid by the client
13 and reimbursed to the client pursuant to a services agreement.

14 (5) "Insurance company" means an authorized insurer as defined
15 in section 108 of the insurance code of 1956, 1956 PA 218, MCL
16 500.108.

17 (6) "Internal revenue code" means the United States internal
18 revenue code of 1986 in effect on January 1, 2012 or, at the option
19 of the taxpayer, in effect for the tax year.

20 (7) "Member", when used ~~for purposes of determining tax~~
21 ~~liability for~~ **IN REFERENCE TO** a flow-through entity, means a
22 shareholder of a subchapter S corporation, a partner in a general
23 partnership, a limited partnership, or a limited liability
24 partnership, a member of a limited liability company, or a
25 beneficiary of a trust that is a flow-through entity. ~~that is not~~
26 ~~taxed as a corporation for federal income tax purposes.~~

27 Enacting section 1. This amendatory act takes effect January

1 1, 2012.