

# HOUSE BILL NO. 5661

March 17, 2020, Introduced by Reps. Maddock, Wozniak and Eisen and referred to the Committee on Commerce and Tourism.

A bill to amend 1967 PA 281, entitled  
"Income tax act of 1967",  
by amending sections 703 and 711 (MCL 206.703 and 206.711), section  
703 as amended by 2016 PA 158 and section 711 as amended by 2018 PA  
118.

## 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



1 withhold a tax in an amount computed by applying the rate  
2 prescribed in section 51 on the taxable part of payments from an  
3 employer pension, annuity, profit-sharing, stock bonus, or other  
4 deferred compensation plan as well as from an individual retirement  
5 arrangement, an annuity, an endowment, or a life insurance contract  
6 issued by a life insurance company. Withholding shall be calculated  
7 on the taxable disbursement after deducting from the taxable  
8 portion the same proportion of the total amount of personal and  
9 dependency exemptions of the individual allowed under this act.  
10 Withholding is not required on any part of a distribution that is  
11 not expected to be includable in the recipient's gross income or  
12 that is deductible from adjusted gross income under section  
13 30(1) (e) or (f).

14 (2) Every employer in this state required under the provisions  
15 of the internal revenue code to withhold a tax on the compensation  
16 of an individual, except as otherwise provided, shall deduct and  
17 withhold a tax in an amount computed by applying, except as  
18 provided by subsection (14), the rate prescribed in section 51 to  
19 the remainder of the compensation after deducting from compensation  
20 the same proportion of the total amount of personal and dependency  
21 exemptions of the individual allowed under this act that the period  
22 of time covered by the compensation is of 1 year. The department  
23 may prescribe withholding tables that may be used by employers to  
24 compute the amount of tax required to be withheld. **Beginning on and**  
25 **after January 1, 2020, an employer that has 50 employees or fewer**  
26 **may elect not to withhold the tax required under this act on the**  
27 **compensation of an individual. An employer that elects not to**  
28 **deduct and withhold the tax required under this act on the**  
29 **compensation of its employees pursuant to this subsection shall**

1   **notify the department, in a form and manner as prescribed by the**  
2   **department, and provide a copy of that notification to each**  
3   **employee.**

4       (3) Except as otherwise provided under this section, for tax  
5   years that begin before July 1, 2016, every flow-through entity in  
6   this state shall withhold a tax in an amount computed by applying  
7   the rate prescribed in section 51 to the distributive share of  
8   taxable income reasonably expected to accrue after allocation and  
9   apportionment under chapter 3 of each nonresident member who is an  
10  individual after deducting from that distributive income the same  
11  proportion of the total amount of personal and dependency  
12  exemptions of the individual allowed under this act. All of the  
13  taxes withheld under this section shall accrue to the state on  
14  April 15, July 15, and October 15 of the flow-through entity's tax  
15  year and January 15 of the following year, except a flow-through  
16  entity that is not on a calendar year basis shall substitute the  
17  appropriate due dates in the flow-through entity's fiscal year that  
18  correspond to those in a calendar year. Withholding for each period  
19  shall be equal to 1/4 of the total withholding calculated on the  
20  distributive share that is reasonably expected to accrue during the  
21  tax year of the flow-through entity.

22       (4) Except as otherwise provided under this section, for tax  
23  years that begin before July 1, 2016, every flow-through entity  
24  with business activity in this state that has more than \$200,000.00  
25  of business income reasonably expected to accrue in the tax year  
26  after allocation or apportionment shall withhold a tax in an amount  
27  computed by applying the rate prescribed in section 623 to the  
28  distributive share of the business income of each member that is a  
29  corporation or that is a flow-through entity. For purposes of



1 calculating the \$200,000.00 withholding threshold, the business  
2 income of a flow-through entity shall be apportioned to this state  
3 by multiplying the business income by the sales factor of the flow-  
4 through entity. The sales factor of the flow-through entity is a  
5 fraction, the numerator of which is the total sales of the flow-  
6 through entity in this state during the tax year and the  
7 denominator of which is the total sales of the flow-through entity  
8 everywhere during the tax year. As used in this subsection,  
9 "business income" means that term as defined in section 603(2). For  
10 a partnership or S corporation, business income includes payments  
11 and items of income and expense that are attributable to business  
12 activity of the partnership or S corporation and separately  
13 reported to the members. As used in this subsection, "sales" means  
14 that term as defined in section 609 and sales in this state is  
15 determined as provided in sections 665 and 669. All of the taxes  
16 withheld under this section shall accrue to the state on April 15,  
17 July 15, and October 15 of the flow-through entity's tax year and  
18 January 15 of the following year, except a flow-through entity that  
19 is not on a calendar year basis shall substitute the appropriate  
20 due dates in the flow-through entity's fiscal year that correspond  
21 to those in a calendar year. Withholding for each period shall be  
22 equal to 1/4 of the total withholding calculated on the  
23 distributive share of business income that is reasonably expected  
24 to accrue during the tax year of the flow-through entity.

25 (5) For tax years that begin before July 1, 2016, if a flow-  
26 through entity is subject to the withholding requirements of  
27 subsection (4), then a member of that flow-through entity that is  
28 itself a flow-through entity shall withhold a tax on the  
29 distributive share of business income as described in subsection



(4) of each of its members. The department shall apply tax withheld by a flow-through entity on the distributive share of business income of a member flow-through entity to the withholding required of that member flow-through entity. All of the taxes withheld under this section shall accrue to the state on April 15, July 15, and October 15 of the flow-through entity's tax year and January 15 of the following year, except a flow-through entity that is not on a calendar year basis shall substitute the appropriate due dates in the flow-through entity's fiscal year that correspond to those in a calendar year. Withholding for each period shall be equal to 1/4 of the total withholding calculated on the distributive share of business income that is reasonably expected to accrue during the tax year of the flow-through entity.

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

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

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

(9) Every eligible production company shall, to the extent not



1 withheld by a professional services corporation or professional  
2 employer organization, deduct and withhold a tax in an amount  
3 computed by applying the rate prescribed in section 51 to the  
4 remainder of the payments made to the professional services  
5 corporation or professional employer organization for the services  
6 of a performing artist or crew member after deducting from those  
7 payments the same proportion of the total amount of personal and  
8 dependency exemptions of the individuals allowed under this act.

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

13 (11) Except as otherwise provided under this subsection, all  
14 of the taxes withheld under this section shall accrue to the state  
15 on the last day of the month in which the taxes are withheld but  
16 shall be returned and paid to the department by the employer,  
17 eligible production company, casino licensee, or race meeting  
18 licensee or track licensee within 15 days after the end of any  
19 month or as provided in section 705. For an employer that has  
20 entered into an agreement with a community college pursuant to  
21 chapter 13 of the community college act of 1966, 1966 PA 331, MCL  
22 389.161 to 389.166, a portion of the taxes withheld under this  
23 section that are attributable to each employee in a new job created  
24 pursuant to the agreement shall accrue to the community college on  
25 the last day of the month in which the taxes are withheld but shall  
26 be returned and paid to the community college by the employer  
27 within 15 days after the end of any month or as provided in section  
28 705 for as long as the agreement remains in effect. For purposes of  
29 this act and 1941 PA 122, MCL 205.1 to 205.31, payments made by an



1 employer to a community college under this subsection shall be  
2 considered income taxes paid to this state.

3 (12) A person required by this section to deduct and withhold  
4 taxes on income under this section holds the amount of tax withheld  
5 as a trustee for this state and is liable for the payment of the  
6 tax to this state or, if applicable, to the community college and  
7 is not liable to any individual for the amount of the payment.

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

16 (14) A person required to withhold a tax under this act, by  
17 the fifteenth day of the following month, shall provide the  
18 department with a copy of any exemption certificate on which a  
19 person with income subject to withholding under subsection (6) or  
20 (7) claims more than 9 personal or dependency exemptions, claims a  
21 status that exempts the person subject to withholding under  
22 subsection (6) or (7) from withholding 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  
28 the internal revenue code and issued by an organization exempt  
29 under section 501(c)(3) of the internal revenue code.



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

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

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

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

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

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

24 (c) The department may require a flow-through entity that  
25 receives an exemption certificate to attach a copy of the exemption  
26 certificate to the annual reconciliation return as required by  
27 section 711. A flow-through entity that is entirely exempt from the  
28 withholding requirements of subsection (4) or (5) by this  
29 subsection may be required to furnish a copy of the exemption





1 certificate in another manner prescribed by the department.

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

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

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

21 (19) Notwithstanding the withholding requirements of  
22 subsection (3), (4), or (5), a flow-through entity is not required  
23 to comply with those withholding requirements to the extent that  
24 the withholding would violate any of the following:

25 (a) Housing assistance payment programs distribution  
26 restrictions under 24 CFR part 880, 881, 883, or 891.

27 (b) Rural housing service return on investment restrictions  
28 under 7 CFR 3560.68 or 3560.305.

29 (c) Articles of incorporation or other document of



1 organization adopted pursuant to section 83 or 93 of the state  
2 housing development authority act of 1966, 1966 PA 346, MCL  
3 125.1483 and 125.1493.

4 Sec. 711. (1) ~~Every~~ **Regardless of whether the person elects**  
5 **not to deduct and withhold taxes as provided under section 703(2),**  
6 **every** person required by this part to deduct and withhold taxes for  
7 a tax year on income other than distributive share of income from a  
8 flow-through entity shall furnish to the person who received the  
9 income a statement in duplicate on or before January 31 of the  
10 succeeding year of the total income paid during the tax year and  
11 the amount deducted or withheld. However, if employment is  
12 terminated before the close of a calendar year by a person that  
13 goes out of business or permanently ceases to exist, then the  
14 statement required by this subsection shall be issued within 30  
15 days after the last compensation, winnings, or payoff of a winning  
16 ticket is paid. A duplicate of a statement made pursuant to this  
17 section and an annual reconciliation return, MI-W3, shall be filed  
18 with the department by February 28 of the succeeding year for tax  
19 years before the 2018 tax year and by January 31 of the succeeding  
20 year for the 2018 tax year and each tax year after 2018 except that  
21 a person that goes out of business or permanently ceases to exist  
22 shall file the statement and the annual reconciliation return  
23 within 30 days after going out of business or permanently ceasing  
24 to exist. For tax years that begin before July 1, 2016, a flow-  
25 through entity that was required to withhold taxes on distributive  
26 shares of business income shall file an annual reconciliation  
27 return with the department no later than the last day of the second  
28 month following the end of the flow-through entity's federal tax  
29 year. The department may require a flow-through entity to file an



1 annual business income information return with the department on  
2 the due date, including extensions, of its annual federal  
3 information return.

4 (2) ~~Every~~ **Regardless of whether the person elects not to**  
5 **deduct and withhold taxes as provided under section 703(2), every**  
6 person required by this part to deduct or withhold taxes shall make  
7 a return or report in form and content and at times as prescribed  
8 by the department. An employer that has more than 250 employees  
9 shall file its annual return or report required under this section  
10 in electronic form. An employer that has entered into an agreement  
11 with a community college pursuant to chapter 13 of the community  
12 college act of 1966, 1966 PA 331, MCL 389.161 to 389.166, and is  
13 required to deduct or withhold taxes from compensation and make  
14 payments to a community college pursuant to the agreement for a  
15 portion of those taxes withheld shall, for as long as the agreement  
16 remains in effect, delineate in the return or report required under  
17 this subsection between the amount deducted or withheld and paid to  
18 the state and that amount paid to a community college. An employer  
19 that has entered into a written agreement pursuant to the good jobs  
20 for Michigan program created under section 90h of the Michigan  
21 strategic fund act, 1984 PA 270, MCL 125.2090h, shall, for as long  
22 as the written agreement remains in effect, delineate in the return  
23 or report required under this subsection the portion of those taxes  
24 withheld and paid to the state that are attributable to certified  
25 new jobs.

26 (3) Every person who receives income subject to withholding  
27 under this part shall furnish to the person required by this part  
28 to deduct and withhold taxes information required to make an  
29 accurate withholding. A person who receives income subject to



1 withholding under this part shall file with the person required by  
2 this part to deduct and withhold taxes revised information within  
3 10 days after a decrease in the number of exemptions or a change in  
4 status from a nonresident to a resident. The person who receives  
5 income subject to withholding under this part may file revised  
6 information when the number of exemptions increases or when a  
7 change in status occurs from that of a resident of this state to a  
8 nonresident of this state. Revised information shall not be given  
9 retroactive effect for withholding purposes. A person required by  
10 this part to deduct and withhold taxes shall rely on this  
11 information for withholding purposes unless directed by the  
12 department to withhold on some other basis. If a person who  
13 receives income subject to withholding under this part fails or  
14 refuses to furnish information, the person required by this part to  
15 deduct and withhold taxes shall withhold at the full rate of tax  
16 from the person's income subject to withholding under this part.

