

# HOUSE BILL NO. 5376

November 14, 2023, Introduced by Reps. Meerman, Bollin, Borton, Alexander, Prestin and Johnsen and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 607 and 623 (MCL 206.607 and 206.623), section 607 as amended by 2018 PA 38 and section 623 as amended by 2021 PA 135.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 607. (1) "Federal taxable income" means, **for tax years**  
2 **before the 2023 tax year**, taxable income as defined in section 63  
3 of the internal revenue code, except that federal taxable income

1 shall be calculated as if section 168(k) and section 199 of the  
2 internal revenue code were not in effect. **For the 2023 tax year and**  
3 **each tax year after 2023, "federal taxable income" means taxable**  
4 **income as defined in section 63 of the internal revenue code.**

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 Flow-through entity does not include any entity disregarded under  
12 section 699.

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

15 (a) Would otherwise be a part of a unitary business group that  
16 has at least 1 corporation included in the unitary business group  
17 that is taxable in this state.

18 (b) Has substantial operations outside the United States, the  
19 District of Columbia, any territory or possession of the United  
20 States except for the Commonwealth of Puerto Rico, or a political  
21 subdivision of any of the foregoing.

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

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

29 (a) Proceeds from sales by a principal that the taxpayer

1 collects in an agency capacity solely on behalf of the principal  
2 and delivers to the principal.

3 (b) Amounts received by the taxpayer as an agent solely on  
4 behalf of the principal that are expended by the taxpayer for any  
5 of the following:

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

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

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

16 (iv) A capital asset of a type that is, or under the internal  
17 revenue code will become, eligible for depreciation, amortization,  
18 or accelerated cost recovery by the principal for federal income  
19 tax purposes, or for real property owned or leased by the  
20 principal.

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

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

28 (c) Amounts that are excluded from gross income of a foreign  
29 corporation engaged in the international operation of aircraft

1 under section 883(a) of the internal revenue code.

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

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

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

16 (g) Proceeds from any of the following:

17 (i) The original issue of stock or equity instruments.

18 (ii) The original issue of debt instruments.

19 (h) Refunds from returned merchandise.

20 (i) Cash and in-kind discounts.

21 (j) Trade discounts.

22 (k) Federal, state, or local tax refunds.

23 (l) Security deposits.

24 (m) Payment of the principal portion of loans.

25 (n) Value of property received in a like-kind exchange.

26 (o) Proceeds from a sale, transaction, exchange, involuntary  
27 conversion, or other disposition of tangible, intangible, or real  
28 property that is a capital asset as defined in section 1221(a) of  
29 the internal revenue code or land that qualifies as property used

1 in the trade or business as defined in section 1231(b) of the  
2 internal revenue code, less any gain from the disposition to the  
3 extent that gain is included in federal taxable income.

4 (p) The proceeds from a policy of insurance, a settlement of a  
5 claim, or a judgment in a civil action less any proceeds under this  
6 subdivision that are included in federal taxable income.

7 (5) "Insurance company" means an authorized insurer as defined  
8 in section 108 of the insurance code of 1956, 1956 PA 218, MCL  
9 500.108. Insurance company does not include a health maintenance  
10 organization authorized under chapter 35 of the insurance code of  
11 1956, 1956 PA 218, MCL 500.3501 to 500.3573.

12 (6) "Internal revenue code" means the United States internal  
13 revenue code of 1986 in effect on January 1, ~~2018~~**2023** or, at the  
14 option of the taxpayer, in effect for the tax year.

15 (7) "Member", when used in reference to a flow-through entity,  
16 means a shareholder of a subchapter S corporation, a partner in a  
17 general partnership, a limited partnership, or a limited liability  
18 partnership, a member of a limited liability company, or a  
19 beneficiary of a trust that is a flow-through entity.

20 Sec. 623. (1) Except as otherwise provided in this part, there  
21 is levied and imposed a corporate income tax on every taxpayer with  
22 business activity within this state or ownership interest or  
23 beneficial interest in a flow-through entity that has business  
24 activity in this state unless prohibited by 15 USC 381 to 384. The  
25 corporate income tax is imposed on the corporate income tax base,  
26 after allocation or apportionment to this state, at the rate of  
27 6.0%.

28 (2) The corporate income tax base means a taxpayer's business  
29 income subject to the following adjustments **in this subsection and**

1 **subsection (3)**, before allocation or apportionment, and the  
2 adjustment in subsection ~~(4)~~—(5) after allocation or apportionment:

3 (a) Add interest income and dividends derived from obligations  
4 or securities of states other than this state, in the same amount  
5 that was excluded from federal taxable income, less the related  
6 portion of expenses not deducted in computing federal taxable  
7 income because of sections 265 and 291 of the internal revenue  
8 code.

9 (b) Add all taxes on or measured by net income including the  
10 tax imposed under this part to the extent that the taxes were  
11 deducted in arriving at federal taxable income including any direct  
12 or indirect allocated share of taxes paid by a flow-through entity  
13 under part 4.

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

16 (d) To the extent included in federal taxable income, deduct  
17 dividends and royalties received from persons other than United  
18 States persons and foreign operating entities, including, but not  
19 limited to, amounts determined under section 78 of the internal  
20 revenue code or sections 951 to 965 of the internal revenue code.

21 (e) Except as otherwise provided under this subdivision, to  
22 the extent deducted in arriving at federal taxable income, add any  
23 royalty, interest, or other expense paid to a person related to the  
24 taxpayer by ownership or control for the use of an intangible asset  
25 if the person is not included in the taxpayer's unitary business  
26 group. The addition of any royalty, interest, or other expense  
27 described under this subdivision is not required to be added if the  
28 taxpayer can demonstrate that the transaction has a nontax business  
29 purpose, is conducted with arm's-length pricing and rates and terms

1 as applied in accordance with sections 482 and 1274(d) of the  
2 internal revenue code, and 1 of the following is true:

3 (i) The transaction is a pass through of another transaction  
4 between a third party and the related person with comparable rates  
5 and terms.

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

9 (iii) An addition would be unreasonable as determined by the  
10 state treasurer.

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

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

16 (g) Eliminate all of the following:

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

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

21 (h) For a qualified taxpayer, eliminate all of the following:

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

24 (ii) Expenses related to the income deductible under  
25 subparagraph (i) to the extent deducted in arriving at federal  
26 taxable income.

27 **(3) Beginning on and after January 1, 2023, and subject to the**  
28 **limitations under this subsection, to the extent included in**  
29 **federal taxable income, deduct expenditures for business assets**

1 that are qualified property or qualified improvement property that  
2 are eligible for 100% bonus depreciation as an expense incurred by  
3 the taxpayer during the tax year during which the property is  
4 placed in service, notwithstanding any changes to federal law  
5 related to cost recovery beginning on January 1, 2023, or on any  
6 other date. A taxpayer may alternatively treat the depreciation of  
7 those business assets in accordance with the schedule provided in  
8 section 168 of the internal revenue code. A taxpayer may make an  
9 election whether to take a bonus depreciation deduction for those  
10 expenditures or to depreciate the expenditures in accordance with  
11 section 168 of the internal revenue code, or both. An election  
12 under this subsection may be made for any tax year as long as the  
13 election is made before the annual due date of the taxpayer's  
14 annual or final return, including any extension of time to file the  
15 return as provided under section 685. The method elected by the  
16 taxpayer is irrevocable unless the treasurer specifically allows a  
17 change in the method. In any tax year in which any section 179  
18 property is placed in service, a taxpayer may elect to treat the  
19 cost of that property as an expense that is not chargeable to a  
20 capital account, and that cost may be deducted for that year and  
21 the deduction must conform to section 179 of the internal revenue  
22 code in effect for that year. The total of any method or  
23 combination of methods of depreciation used to calculate a  
24 deduction under this subsection must not exceed 100% of the cost of  
25 the subject property.

26 (4) ~~(3)~~ For purposes of ~~subsection~~ subsections (2) and (3),  
27 the business income of a unitary business group is the sum of the  
28 business income of each person included in the unitary business  
29 group less any items of income and related deductions arising from



1 transactions including dividends between persons included in the  
2 unitary business group.

3       **(5)** ~~(4)~~—Deduct any available business loss incurred after  
4 December 31, 2011. As used in this subsection, "business loss"  
5 means a negative business income taxable amount after allocation or  
6 apportionment. For purposes of this subsection, a taxpayer that  
7 acquires the assets of another corporation in a transaction  
8 described under section 381(a)(1) or (2) of the internal revenue  
9 code may deduct any business loss attributable to that distributor  
10 or transferor corporation. The business loss shall be carried  
11 forward to the year immediately succeeding the loss year as an  
12 offset to the allocated or apportioned corporate income tax base,  
13 then successively to the next 9 taxable years following the loss  
14 year or until the loss is used up, whichever occurs first.

15       **(6)** ~~(5)~~—As used in this section: ~~,"oil~~

16       **(a)** "Oil and gas" means oil and gas that is subject to  
17 severance tax under 1929 PA 48, MCL 205.301 to 205.317.

18       **(b)** "Qualified property" and "qualified improvement property"  
19 mean those terms as defined in section 168 of the internal revenue  
20 code as it existed on January 1, 2021, and apply to property placed  
21 in service after December 31, 2022.

22       **(c)** "Section 179 property" means that term as defined in  
23 section 179 of the internal revenue code.

24       Enacting section 1. This amendatory act is intended to be  
25 retroactive and applies retroactively to all business activity  
26 occurring on and after January 1, 2023.