

HOUSE BILL No. 5401

October 31, 2007, Introduced by Rep. Gillard and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 201 (MCL 208.1201), as amended by 2007 PA 90;
and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 201. (1) Except as otherwise provided in this act, there
2 is levied and imposed a business income tax on every taxpayer with
3 business activity ~~within~~**IN** this state unless prohibited by 15 USC
4 381 to 384. The business income tax is imposed on the business
5 income tax base, after allocation or apportionment to this state,
6 at the rate of 4.95%.

7 (2) The business income tax base means a taxpayer's business
8 income subject to the following adjustments, before allocation or
9 apportionment, and the adjustment in subsection (5) after

1 allocation or apportionment:

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

8 (b) Add all taxes on or measured by net income and the tax
9 imposed under this act to the extent the taxes were deducted in
10 arriving at federal taxable income.

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

13 (d) To the extent included in federal taxable income, deduct
14 dividends and royalties received from **ENTITIES OR** persons other
15 than United States persons and foreign operating entities,
16 including, but not limited to, amounts determined under section 78
17 of the internal revenue code or sections 951 to 964 of the internal
18 revenue code.

19 (e) To the extent included in federal taxable income, add the
20 loss or subtract the income from the business income tax base that
21 is attributable to another entity **OR PERSON** whose business
22 activities are taxable under this section or would be subject to
23 the tax under this section if the business activities were in this
24 state.

25 (f) Except as otherwise provided under this subdivision, to
26 the extent deducted in arriving at federal taxable income, add any
27 royalty, interest, or other expense paid to ~~a~~**AN ENTITY OR** person

1 related to the taxpayer by ownership or control for the use of an
2 intangible asset if the person is not included in the taxpayer's
3 unitary business group. The addition of any royalty, interest, or
4 other expense described under this subdivision is not required to
5 be added if the taxpayer can demonstrate that the transaction has a
6 nontax business purpose other than avoidance of this tax, is
7 conducted with arm's-length pricing and rates and terms as applied
8 in accordance with sections 482 and 1274(d) of the internal revenue
9 code, and satisfies 1 of the following:

10 (i) Is a pass through of another transaction between a third
11 party and the related person with comparable rates and terms.

12 (ii) Results in double taxation. For purposes of this
13 subparagraph, double taxation exists if the transaction is subject
14 to tax in another jurisdiction.

15 (iii) Is unreasonable as determined by the treasurer, and the
16 taxpayer agrees that the addition would be unreasonable based on
17 the taxpayer's facts and circumstances.

18 (g) To the extent included in federal taxable income, deduct
19 interest income derived from United States obligations.

20 (h) To the extent included in federal taxable income, deduct
21 any earnings that are net earnings from self-employment as defined
22 under section 1402 of the internal revenue code of the taxpayer or
23 a partner or limited liability company member of the taxpayer
24 except to the extent that those net earnings represent a reasonable
25 return on capital.

26 (i) Subject to the limitation provided under this subdivision,
27 if the book-tax differences for the first fiscal period ending

1 after July 12, 2007 result in a deferred liability for a person
2 subject to tax under this act, deduct the following percentages of
3 the total book-tax difference for each qualifying asset, for each
4 of the successive 15 tax years beginning with the 2015 tax year:

5 (i) For the 2015 through 2019 tax years, 4%.

6 (ii) For the 2020 through 2024 tax years, 6%.

7 (iii) For the 2025 through 2029 tax years, 10%.

8 (3) The deduction under subsection (2)(i) shall not exceed the
9 amount necessary to offset the net deferred tax liability of the
10 taxpayer as computed in accordance with generally accepted
11 accounting principles which would otherwise result from the
12 imposition of the business income tax under this section and the
13 modified gross receipts tax under section 203 if the deduction
14 provided under this subdivision were not allowed. For purposes of
15 the calculation of the deduction under subsection (2)(i), a book-
16 tax difference shall only be used once in the calculation of the
17 deduction arising from the taxpayer's business income tax base
18 under this section and once in the calculation of the deduction
19 arising from the taxpayer's modified gross receipts tax base under
20 section 203. The adjustment under subsection (2)(i) shall be
21 calculated without regard to the federal effect of the deduction.
22 If the adjustment under subsection (2)(i) is greater than the
23 taxpayer's business income tax base, any adjustment that is unused
24 may be carried forward and applied as an adjustment to the
25 taxpayer's business income tax base before apportionment in future
26 years. In order to claim this deduction, the department may require
27 the taxpayer to report the amount of this deduction on a form as

1 prescribed by the department that is to be filed on or after the
2 date that the first quarterly return and estimated payment are due
3 under this act. As used in subsection (2)(i) and this subsection:

4 (a) "Book-tax difference" means the difference, if any,
5 between the person's qualifying asset's net book value shown on the
6 person's books and records for the first fiscal period ending after
7 July 12, 2007 and the qualifying asset's tax basis on that same
8 date.

9 (b) "Qualifying asset" means any asset shown on the person's
10 books and records for the first fiscal period ending after July 12,
11 2007, in accordance with generally accepted accounting principles.

12 (4) For purposes of subsections (2) and (3), the business
13 income of a unitary business group is the sum of the business
14 income of each **ENTITY OR** person, other than a foreign operating
15 entity or a person subject to the tax imposed under chapter 2A or
16 2B, included in the unitary business group less any items of income
17 and related deductions arising from transactions including
18 dividends between persons included in the unitary business group.

19 (5) Deduct any available business loss incurred after December
20 31, 2007. As used in this subsection, "business loss" means a
21 negative business income taxable amount after allocation or
22 apportionment. The business loss shall be carried forward to the
23 year immediately succeeding the loss year as an offset to the
24 allocated or apportioned business income tax base, then
25 successively to the next 9 taxable years following the loss year or
26 until the loss is used up, whichever occurs first, but for not more
27 than 10 taxable years after the loss year.

1 Enacting section 1. Section 6a of the use tax act, 1937 PA 94,
2 MCL 205.96a, is repealed effective December 31, 2010.

3 Enacting section 2. This amendatory act takes effect January
4 1, 2008 and applies to all business activity occurring after
5 December 31, 2007.

6 Enacting section 3. This amendatory act does not take effect
7 unless all of the following bills of the 94th Legislature are
8 enacted into law:

9 (a) Senate Bill No. _____ or House Bill No. 5402 (request no.
10 05499'07 *).

11 (b) Senate Bill No. _____ or House Bill No. 5403 (request no.
12 05500'07 *).

13 (c) Senate Bill No. _____ or House Bill No. 5404 (request no.
14 05501'07 *).

15 (d) Senate Bill No. _____ or House Bill No. 5405 (request no.
16 05502'07 *).

17 (e) Senate Bill No. _____ or House Bill No. 5406 (request no.
18 05503'07 *).