

# HOUSE BILL No. 4421

February 24, 2009, Introduced by Reps. Switalski, Haugh, Scripps, Durhal, Bettie Scott and Young 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 2008 PA 168.

## 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 this state unless prohibited by 15 USC 381  
4       to 384. The business income tax is imposed on the business income  
5       tax base, after allocation or apportionment to this state, at the  
6       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 adjustments in subsections (5), (6), and (7)

1 after allocation or apportionment:

2 (a) Add interest income and dividends derived from obligations  
3 or securities of states other than this state, in the same amount  
4 that was excluded from federal taxable income, less the related  
5 portion of expenses not deducted in computing federal taxable  
6 income because of sections 265 and 291 of the internal revenue  
7 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 persons other than United  
15 States persons and foreign operating entities, including, but not  
16 limited to, amounts determined under section 78 of the internal  
17 revenue code or sections 951 to ~~964~~ **965** of the internal revenue  
18 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 whose business activities are  
22 taxable under this section or would be subject to the tax under  
23 this section if the business activities were in this state.

24 (f) Except as otherwise provided under this subdivision, to  
25 the extent deducted in arriving at federal taxable income, add any  
26 royalty, interest, or other expense paid to a person related to the  
27 taxpayer by ownership or control for the use of an intangible asset

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

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

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

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

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

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

25 (i) Subject to the limitation provided under this subdivision,  
26 if the book-tax differences for the first fiscal period ending  
27 after July 12, 2007 result in a deferred liability for a person

1 subject to tax under this act, deduct the following percentages of  
2 the total book-tax difference for each qualifying asset, for each  
3 of the successive 15 tax years beginning with the 2015 tax year:

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

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

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

7 **(J) TO THE EXTENT INCLUDED IN FEDERAL TAXABLE INCOME, DEDUCT**  
8 **ANY INCOME DERIVED FROM THE CANCELLATION OF DEBT, OR OTHER**  
9 **DISPOSITION OF PROPERTY, RELATED TO THE FORECLOSURE OF PROPERTY**  
10 **OWNED BY THE TAXPAYER USED IN THE TAXPAYER'S REGULAR BUSINESS**  
11 **ACTIVITY OR ANY OTHER TRANSACTION SUCH AS A DEED IN LIEU OF**  
12 **FORECLOSURE OR SALE BY A COURT-APPOINTED RECEIVER ENTERED INTO**  
13 **UNDER THE THREAT OF FORECLOSURE ON PROPERTY OWNED BY THE TAXPAYER**  
14 **AND USED IN THE TAXPAYER'S REGULAR BUSINESS ACTIVITY.**

15 (3) The deduction under subsection (2)(i) shall not exceed the  
16 amount necessary to offset the net deferred tax liability of the  
17 taxpayer as computed in accordance with generally accepted  
18 accounting principles which would otherwise result from the  
19 imposition of the business income tax under this section and the  
20 modified gross receipts tax under section 203 if the deduction  
21 provided under this subdivision were not allowed. The deduction  
22 under subsection (2)(i) is intended to flow through and reduce the  
23 surcharge imposed and levied under section 281. For purposes of the  
24 calculation of the deduction under subsection (2)(i), a book-tax  
25 difference shall only be used once in the calculation of the  
26 deduction arising from the taxpayer's business income tax base  
27 under this section and once in the calculation of the deduction

1 arising from the taxpayer's modified gross receipts tax base under  
2 section 203. The adjustment under subsection (2)(i) shall be  
3 calculated without regard to the federal effect of the deduction.  
4 If the adjustment under subsection (2)(i) is greater than the  
5 taxpayer's business income tax base, any adjustment that is unused  
6 may be carried forward and applied as an adjustment to the  
7 taxpayer's business income tax base before apportionment in future  
8 years. In order to claim this deduction, the department may require  
9 the taxpayer to report the amount of this deduction on a form as  
10 prescribed by the department that is to be filed on or after the  
11 date that the first quarterly return and estimated payment are due  
12 under this act. As used in subsection (2)(i) and this subsection:

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

18 (b) "Qualifying asset" means any asset shown on the person's  
19 books and records for the first fiscal period ending after July 12,  
20 2007, in accordance with generally accepted accounting principles.

21 (4) For purposes of subsections (2) and (3), the business  
22 income of a unitary business group is the sum of the business  
23 income of each person, other than a foreign operating entity or a  
24 person subject to the tax imposed under chapter 2A or 2B, included  
25 in the unitary business group less any items of income and related  
26 deductions arising from transactions including dividends between  
27 persons included in the unitary business group.

1           (5) Deduct any available business loss incurred after December  
2 31, 2007. As used in this subsection, "business loss" means a  
3 negative business income taxable amount after allocation or  
4 apportionment. The business loss shall be carried forward to the  
5 year immediately succeeding the loss year as an offset to the  
6 allocated or apportioned business income tax base, then  
7 successively to the next 9 taxable years following the loss year or  
8 until the loss is used up, whichever occurs first, but for not more  
9 than 10 taxable years after the loss year.

10          (6) Deduct any gain from the sale of any residential rental  
11 units in this state to a qualified affordable housing project that  
12 enters an agreement to operate the residential rental units as rent  
13 restricted units for a minimum of 15 years. If the qualified  
14 affordable housing project does not agree to operate all of the  
15 residential rental units as rent restricted units, the deduction  
16 under this subsection is limited to an amount equal to the gain  
17 from the sale multiplied by a fraction, the numerator of which is  
18 the number of those residential rental units purchased that are to  
19 be operated as a rent restricted unit and the denominator is the  
20 number of all residential rental units purchased. In order to claim  
21 this deduction, the department may require the taxpayer and the  
22 qualified affordable housing project to report the amount of this  
23 deduction on a form as prescribed by the department that is to be  
24 signed by both the taxpayer and the qualified affordable housing  
25 project and filed with the taxpayer's annual return. The department  
26 shall record a lien against the property subject to the operation  
27 agreement for the total amount of the deduction allowed under this

subsection. The department shall notify the qualified affordable housing project of the maximum amount of the lien that the qualified affordable housing project may be liable for if the qualified affordable housing project fails to qualify and operate as provided in the operation agreement within 15 years after the purchase. The lien shall become payable in an amount as provided under this subsection to the state by the qualified affordable housing project if the qualified affordable housing project fails to qualify as a qualified affordable housing project and fails to operate all or some of the residential rental units as rent restricted units in accordance with the operation agreement entered upon the purchase of those units within 15 years after the deduction is claimed by a taxpayer under this subsection. An amount equal to the product of 100% of the amount of the deduction allowed under this subsection multiplied by a fraction, the numerator of which is the difference between 15 and the number of years the affordable housing project qualified and operated rent restricted units in accordance with the agreement and the denominator is 15, shall be added back to the tax liability of the qualified affordable housing project for the tax year that the qualified affordable housing project fails to comply with the agreement.

(7) Subject to the limitations provided in this subsection, for a person that is a qualified affordable housing project, deduct an amount equal to the product of that person's taxable income that is attributable to residential rental units in this state owned by the qualified affordable housing project multiplied by a fraction, the numerator of which is the number of rent restricted units in

1 this state owned by that qualified affordable housing project and  
 2 the denominator of which is the number of all residential rental  
 3 units in this state owned by the qualified affordable housing  
 4 project. The amount of the deduction calculated under this  
 5 subsection shall be reduced by the amount of limited dividends or  
 6 other distributions made to the partners, members, or shareholders  
 7 of the qualified affordable housing project. Taxable income that is  
 8 attributable to residential rental units does not include income  
 9 received by the management, construction, or development company  
 10 for completion and operation of the project and those rental units.

11 (8) If ~~a qualified~~ **AN** affordable housing project no longer  
 12 ~~meets the requirements of~~ **SATISFIES THE DEFINITION OF A QUALIFIED**  
 13 **AFFORDABLE HOUSING PROJECT UNDER** subsection (9)(b) or fails to  
 14 operate those residential rental units as rent restricted units in  
 15 accordance with the operation agreement and the requirements ~~of~~  
 16 **DESCRIBED UNDER** subsection (9)(c), the taxpayer is entitled to the  
 17 deductions under subsections (6) and (7) as long as the qualified  
 18 affordable housing project continues to offer some of the  
 19 residential rental units purchased as rent restricted units in  
 20 accordance with the operation agreement.

21 (9) For purposes of subsections (6), (7), and (8) and this  
 22 subsection:

23 (a) "Limited dividend housing association" means a limited  
 24 dividend housing association, corporation, or cooperative organized  
 25 and qualified pursuant to chapter 7 of the state housing  
 26 development authority act of 1966, 1966 PA 346, MCL 125.1491 to  
 27 125.1496.



1 (b) "Qualified affordable housing project" means a person that  
2 is organized, qualified, and operated as a limited dividend housing  
3 association that has a limitation on the amount of dividends or  
4 other distributions that may be distributed to its owners in any  
5 given year and has received funding, subsidies, grants, operating  
6 support, or construction or permanent funding through 1 or more of  
7 the following sources and programs:

8 (i) Mortgage or other financing provided by the Michigan state  
9 housing development authority created in section 21 of the state  
10 housing development authority act of 1966, 1966 PA 346, MCL  
11 125.1421, the United States department of housing and urban  
12 development, the United States department of agriculture for rural  
13 housing service, the Michigan interfaith housing trust fund,  
14 Michigan housing and community development fund, federal home loan  
15 bank, housing commission loan, community development financial  
16 institution, or mortgage or other funding or guaranteed by Fannie,  
17 Ginnie, federal housing association, United States department of  
18 agriculture, or federal home loan mortgage corporation.

19 (ii) A tax-exempt bond issued by a nonprofit organization,  
20 local governmental unit, or other authority.

21 (iii) A payment in lieu of tax agreement or other tax abatement.

22 (iv) Funding from the state or a local governmental unit  
23 through a HOME investments partnership program authorized under 42  
24 USC 12741 to 12756.

25 (v) A grant or other funding from a federal home loan bank's  
26 affordable housing program.

27 (vi) Financing or funding under the new markets tax credit

1 program under section 45D of the internal revenue code.

2 (vii) Financed in whole or in part under the United States  
3 department of housing and urban development's hope VI program as  
4 authorized by section 803 of the national affordable housing act,  
5 42 USC 8012.

6 (viii) Financed in whole or in part under the United States  
7 department of housing and urban development's section 202 program  
8 authorized by section 202 of the national housing act, 12 USC  
9 1701q.

10 (ix) Financing or funding under the low-income housing tax  
11 credit program under section 42 of the internal revenue code.

12 (x) Financing or other subsidies from any new programs similar  
13 to any of the above.

14 (c) "Rent restricted unit" means any residential rental unit's  
15 rental income is restricted in accordance with section 42(g)(1) of  
16 the internal revenue code as if it was a qualified low-income  
17 housing project, or receives rental assistance in the form of HUD  
18 section 8 subsidies or HUD housing assistance program subsidies, or  
19 rental assistance from the United States department of agriculture  
20 rural housing programs, or from any of the other programs described  
21 under subdivision (b).