

# SENATE BILL No. 1540

November 3, 2010, Introduced by Senators ANDERSON, JACOBS, BARCIA, OLSHOVE, CHERRY, BRATER, THOMAS and WHITMER and referred to the Committee on Finance.

A bill to amend 2007 PA 36, entitled  
"Michigan business tax act,"  
by amending section 201 (MCL 208.1201), as amended by 2009 PA 135.

## 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)  
10      after allocation or apportionment:

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

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

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

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

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

22          (f) Except as otherwise provided under this subdivision, to  
23 the extent deducted in arriving at federal taxable income, add any  
24 royalty, interest, or other expense paid to a person related to the  
25 taxpayer by ownership or control for the use of an intangible asset  
26 if the person is not included in the taxpayer's unitary business  
27 group. The addition of any royalty, interest, or other expense

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

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

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

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

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

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 (j) For tax years that begin after December 31, 2009, to the  
9 extent included in federal taxable income, deduct the amount of a  
10 charitable contribution made to the advance tuition payment fund  
11 created under section 9 of the Michigan education trust act, 1986  
12 PA 316, MCL 390.1429.

13 (K) TO THE EXTENT DEDUCTED IN ARRIVING AT FEDERAL TAXABLE  
14 INCOME, FOR A TAXPAYER THAT IS THE RESPONSIBLE PARTY WITH RESPECT  
15 TO ANY DISCHARGE OF OIL OTHER THAN THAT DUE TO AN ACT OF GOD, ADD  
16 ANY EXPENSES INCURRED IN THE CLEAN UP OR REMOVAL OF THE DISCHARGE  
17 AND ADD ANY AMOUNT PAID FOR ANY CLAIM FOR DAMAGES UNDER THE OIL  
18 POLLUTION ACT OF 1990, 33 USC 2701 TO 2762. AS USED IN THIS  
19 SUBDIVISION, "ACT OF GOD", "DAMAGES", "DISCHARGE", "OIL",  
20 "REMOVAL", AND "RESPONSIBLE PARTY" MEAN THOSE TERMS AS DEFINED  
21 UNDER SECTION 2701 OF THE OIL POLLUTION ACT OF 1990, 33 USC 2701.  
22 THE ADDITION UNDER THIS SUBDIVISION DOES NOT APPLY UNLESS 1 OF THE  
23 FOLLOWING CONDITIONS EXISTS:

24 (i) THE RESPONSIBLE PARTY WAS NOTIFIED BY A REGULATORY AGENCY  
25 ABOUT DEFICIENCIES OR ANY REGULATORY NONCOMPLIANCE THAT CAUSED OR  
26 CONTRIBUTED TO THE DISCHARGE.

27 (ii) INVESTIGATIONS OR MONITORING PERFORMED BY THE RESPONSIBLE

1 PARTY HAD PREVIOUSLY SHOWN CONDITIONS THAT CAUSED OR CONTRIBUTED TO  
2 THE DISCHARGE.

3 (iii) THE RESPONSIBLE PARTY IS FOUND TO BE AT FAULT IN A COURT  
4 OF LAW.

5 (3) The deduction under subsection (2)(i) shall not exceed the  
6 amount necessary to offset the net deferred tax liability of the  
7 taxpayer as computed in accordance with generally accepted  
8 accounting principles which would otherwise result from the  
9 imposition of the business income tax under this section and the  
10 modified gross receipts tax under section 203 if the deduction  
11 provided under this subdivision were not allowed. The deduction  
12 under subsection (2)(i) is intended to flow through and reduce the  
13 surcharge imposed and levied under section 281. For purposes of the  
14 calculation of the deduction under subsection (2)(i), a book-tax  
15 difference shall only be used once in the calculation of the  
16 deduction arising from the taxpayer's business income tax base  
17 under this section and once in the calculation of the deduction  
18 arising from the taxpayer's modified gross receipts tax base under  
19 section 203. The adjustment under subsection (2)(i) shall be  
20 calculated without regard to the federal effect of the deduction.  
21 If the adjustment under subsection (2)(i) is greater than the  
22 taxpayer's business income tax base, any adjustment that is unused  
23 may be carried forward and applied as an adjustment to the  
24 taxpayer's business income tax base before apportionment in future  
25 years. In order to claim this deduction, the department may require  
26 the taxpayer to report the amount of this deduction on a form as  
27 prescribed by the department that is to be filed on or after the

1 date that the first quarterly return and estimated payment are due  
2 under this act. As used in subsection (2)(i) and this subsection:

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

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

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

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

27 (6) Deduct any gain from the sale of any residential rental

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

1 restricted units in accordance with the operation agreement entered  
2 upon the purchase of those units within 15 years after the  
3 deduction is claimed by a taxpayer under this subsection. An amount  
4 equal to the product of 100% of the amount of the deduction allowed  
5 under this subsection multiplied by a fraction, the numerator of  
6 which is the difference between 15 and the number of years the  
7 affordable housing project qualified and operated rent restricted  
8 units in accordance with the agreement and the denominator is 15,  
9 shall be added back to the tax liability of the qualified  
10 affordable housing project for the tax year that the qualified  
11 affordable housing project fails to comply with the agreement.

12 (7) Subject to the limitations provided in this subsection,  
13 for a person that is a qualified affordable housing project, deduct  
14 an amount equal to the product of that person's taxable income that  
15 is attributable to residential rental units in this state owned by  
16 the qualified affordable housing project multiplied by a fraction,  
17 the numerator of which is the number of rent restricted units in  
18 this state owned by that qualified affordable housing project and  
19 the denominator of which is the number of all residential rental  
20 units in this state owned by the qualified affordable housing  
21 project. The amount of the deduction calculated under this  
22 subsection shall be reduced by the amount of limited dividends or  
23 other distributions made to the partners, members, or shareholders  
24 of the qualified affordable housing project. Taxable income that is  
25 attributable to residential rental units does not include income  
26 received by the management, construction, or development company  
27 for completion and operation of the project and those rental units.



1       (8) If a qualified affordable housing project no longer meets  
2 the requirements of subsection (9)(b) or fails to operate those  
3 residential rental units as rent restricted units in accordance  
4 with the operation agreement and the requirements of subsection  
5 (9)(c), the taxpayer is entitled to the deductions under  
6 subsections (6) and (7) as long as the qualified affordable housing  
7 project continues to offer some of the residential rental units  
8 purchased as rent restricted units in accordance with the operation  
9 agreement.

10       (9) For purposes of subsections (6), (7), and (8) and this  
11 subsection:

12       (a) "Limited dividend housing association" means a limited  
13 dividend housing association, corporation, or cooperative organized  
14 and qualified pursuant to chapter 7 of the state housing  
15 development authority act of 1966, 1966 PA 346, MCL 125.1491 to  
16 125.1496.

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

24       (i) Mortgage or other financing provided by the Michigan state  
25 housing development authority created in section 21 of the state  
26 housing development authority act of 1966, 1966 PA 346, MCL  
27 125.1421, the United States department of housing and urban

1 development, the United States department of agriculture for rural  
2 housing service, the Michigan interfaith housing trust fund,  
3 Michigan housing and community development fund, federal home loan  
4 bank, housing commission loan, community development financial  
5 institution, or mortgage or other funding or guaranteed by Fannie,  
6 Ginnie, federal housing association, United States department of  
7 agriculture, or federal home loan mortgage corporation.

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

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

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

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

16 (vi) Financing or funding under the new markets tax credit  
17 program under section 45D of the internal revenue code.

18 (vii) Financed in whole or in part under the United States  
19 department of housing and urban development's hope VI program as  
20 authorized by section 803 of the national affordable housing act,  
21 42 USC 8012.

22 (viii) Financed in whole or in part under the United States  
23 department of housing and urban development's section 202 program  
24 authorized by section 202 of the national housing act, 12 USC  
25 1701q.

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

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

3           (c) "Rent restricted unit" means any residential rental unit's  
4 rental income is restricted in accordance with section 42(g)(1) of  
5 the internal revenue code as if it was a qualified low-income  
6 housing project, or receives rental assistance in the form of HUD  
7 section 8 subsidies or HUD housing assistance program subsidies, or  
8 rental assistance from the United States department of agriculture  
9 rural housing programs, or from any of the other programs described  
10 under subdivision (b).