

SENATE BILL No. 1104

April 26, 2012, Introduced by Senators JANSEN, COLBECK, JONES, ROBERTSON, MARLEAU, PROOS and SCHUITMAKER and referred to the Committee on Reforms, Restructuring and Reinventing.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 703 (MCL 206.703), as amended by 2011 PA 188,
and by adding section 704.

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
3 withhold a tax in an amount computed by applying the rate
4 prescribed in section 51 on the taxable part of payments from an
5 employer pension, annuity, profit-sharing, stock bonus, or other
6 deferred compensation plan as well as from an individual retirement
7 arrangement, an annuity, an endowment, or a life insurance contract
8 issued by a life insurance company. Withholding shall be calculated
9 on the taxable disbursement after deducting from the taxable
10 portion the same proportion of the total amount of personal and

1 dependency exemptions of the individual allowed under this act.
2 Withholding is not required on any part of a distribution that is
3 not expected to be includable in the recipient's gross income or
4 that is deductible from adjusted gross income under section
5 30(1)(e) or (f).

6 (2) Every employer in this state required under the provisions
7 of the internal revenue code to withhold a tax on the compensation
8 of an individual, except as otherwise provided, shall deduct and
9 withhold a tax in an amount computed by applying, except as
10 provided by subsection (14), the rate prescribed in section 51 to
11 the remainder of the compensation after deducting from compensation
12 the same proportion of the total amount of personal and dependency
13 exemptions of the individual allowed under this act that the period
14 of time covered by the compensation is of 1 year. The department
15 may prescribe withholding tables that may be used by employers to
16 compute the amount of tax required to be withheld.

17 (3) ~~Every~~**EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 704,**
18 **EVERY** flow-through entity in this state shall withhold a tax in an
19 amount computed by applying the rate prescribed in section 51 to
20 the distributive share of taxable income reasonably expected to
21 accrue after allocation and apportionment under chapter 3 of each
22 nonresident member who is an individual after deducting from that
23 distributive income the same proportion of the total amount of
24 personal and dependency exemptions of the individual allowed under
25 this act. All of the taxes withheld under this section shall accrue
26 to the state on April 15, ~~June~~**JULY** 15, and ~~September~~**OCTOBER** 15 of
27 the flow-through entity's tax year and January 15 of the following

1 year, except a flow-through entity that is not on a calendar year
2 basis shall substitute the appropriate due dates in the flow-
3 through entity's fiscal year that correspond to those in a calendar
4 year. Withholding for each period shall be equal to 1/4 of the
5 total withholding calculated on the distributive share that is
6 reasonably expected to accrue during the tax year of the flow-
7 through entity.

8 (4) ~~Every~~ **EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 704,**
9 **EVERY** flow-through entity with business activity in this state that
10 has more than \$200,000.00 of business income reasonably expected to
11 accrue in the tax year after allocation or apportionment ~~under~~
12 ~~chapter 14~~ shall withhold a tax in an amount computed by applying
13 the rate prescribed in section 623 to the distributive share of the
14 business income of each member that is a corporation or that is a
15 flow-through entity. **FOR PURPOSES OF CALCULATING THE \$200,000.00**
16 **WITHHOLDING THRESHOLD, THE BUSINESS INCOME OF A FLOW-THROUGH ENTITY**
17 **SHALL BE APPORTIONED TO THIS STATE BY MULTIPLYING THE BUSINESS**
18 **INCOME BY THE SALES FACTOR OF THE FLOW-THROUGH ENTITY. THE SALES**
19 **FACTOR OF THE FLOW-THROUGH ENTITY IS A FRACTION, THE NUMERATOR OF**
20 **WHICH IS THE TOTAL SALES OF THE FLOW-THROUGH ENTITY IN THIS STATE**
21 **DURING THE TAX YEAR AND THE DENOMINATOR OF WHICH IS THE TOTAL SALES**
22 **OF THE FLOW-THROUGH ENTITY EVERYWHERE DURING THE TAX YEAR.** As used
23 in this subsection, "business income" means that term as defined in
24 section 603(2). For a partnership or S corporation, business income
25 includes payments and items of income and expense that are
26 attributable to business activity of the partnership or S
27 corporation and separately reported to the members. All of the

1 taxes withheld under this section shall accrue to the state on
2 April 15, ~~June~~**JULY** 15, and ~~September~~**OCTOBER** 15 of the flow-
3 through entity's tax year and January 15 of the following year,
4 except a flow-through entity that is not on a calendar year basis
5 shall substitute the appropriate due dates in the flow-through
6 entity's fiscal year that correspond to those in a calendar year.
7 Withholding for each period shall be equal to 1/4 of the total
8 withholding calculated on the distributive share of business income
9 that is reasonably expected to accrue during the tax year of the
10 flow-through entity.

11 (5) If a flow-through entity is subject to the withholding
12 requirements of subsection (4), then a member of that flow-through
13 entity that is itself a flow-through entity shall withhold a tax on
14 the distributive share of business income as described in
15 subsection (4) of each of its members. The department shall apply
16 tax withheld by a flow-through entity on the distributive share of
17 business income of a member flow-through entity to the withholding
18 required of that member flow-through entity. All of the taxes
19 withheld under this section shall accrue to the state on April 15,
20 ~~June~~**JULY** 15, and ~~September~~**OCTOBER** 15 of the flow-through entity's
21 tax year and January 15 of the following year, except a flow-
22 through entity that is not on a calendar year basis shall
23 substitute the appropriate due dates in the flow-through entity's
24 fiscal year that correspond to those in a calendar year.
25 Withholding for each period shall be equal to 1/4 of the total
26 withholding calculated on the distributive share of business income
27 that is reasonably expected to accrue during the tax year of the

1 flow-through entity.

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

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

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

17 (9) Every eligible production company shall, to the extent not
18 withheld by a professional services corporation or professional
19 employer organization, deduct and withhold a tax in an amount
20 computed by applying the rate prescribed in section 51 to the
21 remainder of the payments made to the professional services
22 corporation or professional employer organization for the services
23 of a performing artist or crew member after deducting from those
24 payments the same proportion of the total amount of personal and
25 dependency exemptions of the individuals allowed under this part.

26 (10) Every publicly traded partnership that has equity
27 securities registered with the securities and exchange commission

1 under section 12 of title I of the securities and exchange act of
2 1934, 15 USC 781, shall not be subject to withholding.

3 (11) Except as otherwise provided under this subsection, all
4 of the taxes withheld under this section shall accrue to the state
5 on the last day of the month in which the taxes are withheld but
6 shall be returned and paid to the department by the employer,
7 eligible production company, casino licensee, or race meeting
8 licensee or track licensee within 15 days after the end of any
9 month or as provided in section 705. For an employer or flow-
10 through entity that has entered into an agreement with a community
11 college pursuant to chapter 13 of the community college act of
12 1966, 1966 PA 331, MCL 389.161 to 389.166, a portion of the taxes
13 withheld under this section that are attributable to each employee
14 in a new job created pursuant to the agreement shall accrue to the
15 community college on the last day of the month in which the taxes
16 are withheld but shall be returned and paid to the community
17 college by the employer or flow-through entity within 15 days after
18 the end of any month or as provided in section 705 for as long as
19 the agreement remains in effect. For purposes of this act and 1941
20 PA 122, MCL 205.1 to 205.31, payments made by an employer or flow-
21 through entity to a community college under this subsection shall
22 be considered income taxes paid to this state.

23 (12) A person required by this section to deduct and withhold
24 taxes on compensation, a share of income available for distribution
25 on which withholding is required under subsection (3), (4), or (5),
26 winnings on which withholding is required under subsection (6), or
27 a payoff price on which withholding is required under subsection

1 (7) holds the amount of tax withheld as a trustee for this state
2 and is liable for the payment of the tax to this state or, if
3 applicable, to the community college and is not liable to any
4 individual for the amount of the payment.

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

13 (14) A person required to withhold a tax under this act, by
14 the fifteenth day of the following month, shall provide the
15 department with a copy of any exemption certificate on which the
16 employee, member, or person subject to withholding under subsection
17 (6) or (7) claims more than 9 personal or dependency exemptions,
18 claims a status that exempts the employee, member, or person
19 subject to withholding under subsection (6) or (7) from withholding
20 under this section.

21 (15) A PERSON WHO DISBURSES ANNUITY PAYMENTS PURSUANT TO THE
22 TERMS OF A QUALIFIED CHARITABLE GIFT ANNUITY IS NOT REQUIRED TO
23 DEDUCT AND WITHHOLD A TAX ON THOSE PAYMENTS AS PRESCRIBED UNDER
24 SUBSECTION (1). AS USED IN THIS SUBSECTION, "QUALIFIED CHARITABLE
25 GIFT ANNUITY" MEANS AN ANNUITY DESCRIBED UNDER SECTION 501(M) (5) OF
26 THE INTERNAL REVENUE CODE AND ISSUED BY AN ORGANIZATION EXEMPT
27 UNDER SECTION 501(C) (3) OF THE INTERNAL REVENUE CODE.

1 SEC. 704. (1) NOTWITHSTANDING THE REQUIREMENTS OF SECTION
2 703(4), IF A FLOW-THROUGH ENTITY RECEIVES AN EXEMPTION CERTIFICATE
3 FROM A CORPORATION, THE FLOW-THROUGH ENTITY SHALL NOT WITHHOLD A
4 TAX ON THE DISTRIBUTIVE SHARE OF THE BUSINESS INCOME OF THAT
5 CORPORATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

6 (A) THE EXEMPTION CERTIFICATE IS COMPLETED BY THE CORPORATION
7 IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT AND CERTIFIES
8 THAT THE CORPORATION WILL DO ALL OF THE FOLLOWING:

9 (i) FILE THE RETURNS REQUIRED UNDER PART 2 OR UNDER THE
10 MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601.

11 (ii) PAY THE TAX REQUIRED UNDER PART 2 OR UNDER THE MICHIGAN
12 BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601, ON THE
13 DISTRIBUTIVE SHARE OF THE BUSINESS INCOME RECEIVED FROM ANY FLOW-
14 THROUGH ENTITY IN WHICH THE CORPORATION IS A MEMBER OR IN WHICH THE
15 CORPORATION HAS AN OWNERSHIP OR BENEFICIAL INTEREST, DIRECTLY OR
16 INDIRECTLY THROUGH 1 OR MORE OTHER FLOW-THROUGH ENTITIES.

17 (iii) SUBMIT TO THE TAXING JURISDICTION OF THIS STATE FOR
18 PURPOSES OF COLLECTION OF THE TAX UNDER PART 2 OR UNDER THE
19 MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601,
20 TOGETHER WITH RELATED INTEREST AND PENALTIES UNDER 1941 PA 122, MCL
21 205.1 TO 205.31, IMPOSED ON THE CORPORATION WITH RESPECT TO THE
22 DISTRIBUTIVE SHARE OF THE BUSINESS INCOME OF THAT CORPORATION.

23 (B) THE CORPORATION SHALL FILE THE EXEMPTION CERTIFICATE WITH
24 THE DEPARTMENT AND PROVIDE A COPY TO THE FLOW-THROUGH ENTITY.

25 (C) A FLOW-THROUGH ENTITY THAT RECEIVES AN EXEMPTION
26 CERTIFICATE SHALL ATTACH A COPY OF THE EXEMPTION CERTIFICATE TO THE
27 ANNUAL RECONCILIATION RETURN AS REQUIRED BY SECTION 711. A FLOW-

1 THROUGH ENTITY THAT IS ENTIRELY EXEMPT FROM THE WITHHOLDING
2 REQUIREMENTS OF SECTION 703(4) BY THIS SECTION SHALL FURNISH A COPY
3 OF THE EXEMPTION CERTIFICATE IN A MANNER PRESCRIBED BY THE
4 DEPARTMENT.

5 (D) A COPY OF THE EXEMPTION CERTIFICATE SHALL BE RETAINED BY
6 THE CORPORATION AND FLOW-THROUGH ENTITY AND MADE AVAILABLE TO THE
7 DEPARTMENT UPON REQUEST. ANY COPY OF THE EXEMPTION CERTIFICATE
8 SHALL BE MAINTAINED IN A FORMAT AND FOR THE PERIOD REQUIRED BY 1941
9 PA 122, MCL 205.1 TO 205.31.

10 (2) THE DEPARTMENT MAY REVOKE THE ELECTION PROVIDED FOR IN
11 THIS SECTION IF IT DETERMINES THAT THE CORPORATION OR A FLOW-
12 THROUGH ENTITY IS NOT ABIDING BY THE TERMS OF THE EXEMPTION
13 CERTIFICATE OR THE REQUIREMENTS OF THIS SECTION. IF THE DEPARTMENT
14 DOES REVOKE THE ELECTION OPTION UNDER THIS SECTION, THE DEPARTMENT
15 SHALL NOTIFY THE AFFECTED FLOW-THROUGH ENTITIES THAT WITHHOLDING IS
16 REQUIRED ON THE CORPORATION UNDER SECTION 703(4), BEGINNING 60 DAYS
17 AFTER NOTICE OF REVOCATION IS RECEIVED.