

TAX BASE OF FINANCIAL INSTITUTIONS UNDER INCOME TAX ACT

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House Bill 5666 (proposed substitute H-1)
Sponsor: Rep. Anthony G. Forlini
Committee: Financial Services

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 234 (proposed House substitute H-3)
Sponsor: Sen. Darwin L. Booher
Senate Committee: Finance
House Committee: Financial Services
Complete to 11-30-16

SUMMARY:

House Bill 5666 and Senate Bill 234 would put into statute new provisions regarding the corporate income tax base of financial institutions (i.e., banks). Both bills apply to tax years beginning after December 31, 2017.

Both bills amend Chapter 13 of Income Tax Act, which deals specifically with financial institutions other than insurance companies (which are covered in Chapter 12). Under Chapter 13, the tax base of a financial institution, after allocation or apportionment, is subject to a rate of 0.29%. This would remain unchanged.

Senate Bill 234 would amend Sections 651, 653, and 657 of the Income Tax Act. House Bill 5666 would amend Section 655. The bills are tie-barred to one another, meaning neither can take effect unless both are enacted.

House Bill 5666 would:

- Specify that a financial institution's tax base is the "total equity capital" of the financial institution or top-tiered parent entity (in the case of a unitary business group of financial institutions), subject to the following deductions:
 - The average daily book value of U.S. obligations and Michigan obligations owned by members of the unitary business group, before allocation or apportionment;
 - The equity capital of a person subject to the tax under Chapter 12 (insurance companies), not to exceed 125% of the minimum regulatory capitalization requirements of the member, before allocation or apportionment.
 - An additional deduction of \$20 million, after allocation or apportionment.

[Currently, the act describes a financial institution's tax base as "net capital," minus up to 125% of capitalization requirements.]

"Total equity capital," as defined in Senate Bill 234, refers to that amount as reported by a financial institution or top-tiered parent entity on various forms designated by the federal

Financial Institutions Examination Council (FFIEC) and filed with the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation (FDIC), or the Federal Reserve System.

A "top-tiered parent entity" is defined in Senate Bill 234 as the highest level entity within a unitary business group that is required to file with a regulatory agency using FFIEC standards.

Further, Senate Bill 234 would:

- Revise the apportionment formula for a financial institution with respect to gross business attributable to the foreign business of a controlled foreign corporation. The tax base of a financial institution whose business activities are subject to tax both within and outside the state is apportioned to Michigan by multiplying the tax base by the gross business factor. The gross business factor is a fraction where the numerator is total gross business in Michigan and the denominator is the total gross business everywhere. The bill would say that the denominator could not include any gross business attributable to the foreign business of a controlled foreign corporation.
- Specify, also, for a unitary business group of financial institutions that acquired or disposed of members during the tax year that the gross business factor would include the gross business of the part-year member for only a portion of the tax year.

FISCAL IMPACT:

The combined fiscal impact of SB 234 and HB 5666 would likely reduce corporate income tax revenue, all of which accrues to the General Fund, by less than \$10 million on a full fiscal year basis, primarily because of the \$20 million deduction.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.