

HOUSE BILL No. 5131

December 9, 2015, Introduced by Rep. Farrington and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 22, 26, 703, and 711 (MCL 206.22, 206.26, 206.703, and 206.711), section 22 as amended by 2003 PA 51, section 26 as amended by 2011 PA 38, section 703 as amended by 2014 PA 295, and section 711 as amended by 2011 PA 193.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 22. (1) "Tax" includes interest and penalties and further
2 includes the tax required to be withheld ~~by an employer on salaries~~
3 ~~and wages and the tax required to be withheld by a flow through~~
4 ~~entity on nonresident members' share of income available for~~
5 ~~distribution, ON INCOME UNDER PART 3~~, unless the intention to give
6 it a more limited meaning is disclosed by the context.

1 (2) "Taxable value" means taxable value as calculated under
2 section 27a of the general property tax act, 1893 PA 206, MCL
3 211.27a.

4 Sec. 26. "Taxpayer" means any person subject to the taxes
5 imposed by this part ~~, any employer required to withhold taxes on~~
6 ~~salaries and wages, or any flow through entity required to withhold~~
7 ~~taxes on a nonresident member's share of income available for~~
8 ~~distribution.~~ **OR SUBJECT TO THE WITHHOLDING REQUIREMENTS UNDER PART**
9 **3.**

10 Sec. 703. (1) A person who disburses pension or annuity
11 payments, except as otherwise provided under this section, shall
12 withhold a tax in an amount computed by applying the rate
13 prescribed in section 51 on the taxable part of payments from an
14 employer pension, annuity, profit-sharing, stock bonus, or other
15 deferred compensation plan as well as from an individual retirement
16 arrangement, an annuity, an endowment, or a life insurance contract
17 issued by a life insurance company. Withholding shall be calculated
18 on the taxable disbursement after deducting from the taxable
19 portion the same proportion of the total amount of personal and
20 dependency exemptions of the individual allowed under this act.
21 Withholding is not required on any part of a distribution that is
22 not expected to be includable in the recipient's gross income or
23 that is deductible from adjusted gross income under section
24 30(1)(e) or (f).

25 (2) Every employer in this state required under the provisions
26 of the internal revenue code to withhold a tax on the compensation
27 of an individual, except as otherwise provided, shall deduct and

1 withhold a tax in an amount computed by applying, except as
2 provided by subsection (14), the rate prescribed in section 51 to
3 the remainder of the compensation after deducting from compensation
4 the same proportion of the total amount of personal and dependency
5 exemptions of the individual allowed under this act that the period
6 of time covered by the compensation is of 1 year. The department
7 may prescribe withholding tables that may be used by employers to
8 compute the amount of tax required to be withheld.

9 (3) Except as otherwise provided under this section, **FOR TAX**
10 **YEARS THAT BEGIN BEFORE JULY 1, 2016**, every flow-through entity in
11 this state shall withhold a tax in an amount computed by applying
12 the rate prescribed in section 51 to the distributive share of
13 taxable income reasonably expected to accrue after allocation and
14 apportionment under chapter 3 of each nonresident member who is an
15 individual after deducting from that distributive income the same
16 proportion of the total amount of personal and dependency
17 exemptions of the individual allowed under this act. All of the
18 taxes withheld under this section shall accrue to the state on
19 April 15, July 15, and October 15 of the flow-through entity's tax
20 year and January 15 of the following year, except a flow-through
21 entity that is not on a calendar year basis shall substitute the
22 appropriate due dates in the flow-through entity's fiscal year that
23 correspond to those in a calendar year. Withholding for each period
24 shall be equal to 1/4 of the total withholding calculated on the
25 distributive share that is reasonably expected to accrue during the
26 tax year of the flow-through entity.

27 (4) Except as otherwise provided under this section, **FOR TAX**

1 **YEARS THAT BEGIN BEFORE JULY 1, 2016**, every flow-through entity
2 with business activity in this state that has more than \$200,000.00
3 of business income reasonably expected to accrue in the tax year
4 after allocation or apportionment shall withhold a tax in an amount
5 computed by applying the rate prescribed in section 623 to the
6 distributive share of the business income of each member that is a
7 corporation or that is a flow-through entity. For purposes of
8 calculating the \$200,000.00 withholding threshold, the business
9 income of a flow-through entity shall be apportioned to this state
10 by multiplying the business income by the sales factor of the flow-
11 through entity. The sales factor of the flow-through entity is a
12 fraction, the numerator of which is the total sales of the flow-
13 through entity in this state during the tax year and the
14 denominator of which is the total sales of the flow-through entity
15 everywhere during the tax year. As used in this subsection,
16 "business income" means that term as defined in section 603(2). For
17 a partnership or S corporation, business income includes payments
18 and items of income and expense that are attributable to business
19 activity of the partnership or S corporation and separately
20 reported to the members. As used in this subsection, "sales" means
21 that term as defined in section 609 and sales in this state is
22 determined as provided in sections 665 and 669. All of the taxes
23 withheld under this section shall accrue to the state on April 15,
24 July 15, and October 15 of the flow-through entity's tax year and
25 January 15 of the following year, except a flow-through entity that
26 is not on a calendar year basis shall substitute the appropriate
27 due dates in the flow-through entity's fiscal year that correspond

1 to those in a calendar year. Withholding for each period shall be
2 equal to 1/4 of the total withholding calculated on the
3 distributive share of business income that is reasonably expected
4 to accrue during the tax year of the flow-through entity.

5 (5) ~~If~~ **FOR TAX YEARS THAT BEGIN BEFORE JULY 1, 2016, IF** a
6 flow-through entity is subject to the withholding requirements of
7 subsection (4), then a member of that flow-through entity that is
8 itself a flow-through entity shall withhold a tax on the
9 distributive share of business income as described in subsection
10 (4) of each of its members. The department shall apply tax withheld
11 by a flow-through entity on the distributive share of business
12 income of a member flow-through entity to the withholding required
13 of that member flow-through entity. All of the taxes withheld under
14 this section shall accrue to the state on April 15, July 15, and
15 October 15 of the flow-through entity's tax year and January 15 of
16 the following year, except a flow-through entity that is not on a
17 calendar year basis shall substitute the appropriate due dates in
18 the flow-through entity's fiscal year that correspond to those in a
19 calendar year. Withholding for each period shall be equal to 1/4 of
20 the total withholding calculated on the distributive share of
21 business income that is reasonably expected to accrue during the
22 tax year of the flow-through entity.

23 (6) Every casino licensee shall withhold a tax in an amount
24 computed by applying the rate prescribed in section 51 to the
25 winnings of a nonresident reportable by the casino licensee under
26 the internal revenue code.

27 (7) Every race meeting licensee or track licensee shall

1 withhold a tax in an amount computed by applying the rate
2 prescribed in section 51 to a payoff price on a winning ticket of a
3 nonresident reportable by the race meeting licensee or track
4 licensee under the internal revenue code that is the result of
5 pari-mutuel wagering at a licensed race meeting.

6 (8) Every casino licensee or race meeting licensee or track
7 licensee shall report winnings of a resident reportable by the
8 casino licensee or race meeting licensee or track licensee under
9 the internal revenue code to the department in the same manner and
10 format as required under the internal revenue code.

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

20 (10) Every publicly traded partnership that has equity
21 securities registered with the securities and exchange commission
22 under section 12 of title I of the securities and exchange act of
23 1934, 15 USC 78l, shall not be subject to withholding.

24 (11) Except as otherwise provided under this subsection, all
25 of the taxes withheld under this section shall accrue to the state
26 on the last day of the month in which the taxes are withheld but
27 shall be returned and paid to the department by the employer,

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

17 (12) A person required by this section to deduct and withhold
18 taxes on ~~compensation, a share of income available for distribution~~
19 ~~on which withholding is required under subsection (3), (4), or (5),~~
20 ~~winnings on which withholding is required under subsection (6), or~~
21 ~~a payoff price on which withholding is required under subsection~~
22 ~~(7)~~ **INCOME UNDER THIS SECTION** holds the amount of tax withheld as a
23 trustee for this state and is liable for the payment of the tax to
24 this state or, if applicable, to the community college and is not
25 liable to any individual for the amount of the payment.

26 (13) An employer in this state is not required to deduct and
27 withhold a tax on the compensation paid to a nonresident individual

1 employee, who, under section 256, may claim a tax credit equal to
2 or in excess of the tax estimated to be due for the tax year or is
3 exempted from liability for the tax imposed by this act. In each
4 tax year, the nonresident individual shall furnish to the employer,
5 on a form approved by the department, a verified statement of
6 nonresidence.

7 (14) A person required to withhold a tax under this act, by
8 the fifteenth day of the following month, shall provide the
9 department with a copy of any exemption certificate on which ~~the~~
10 ~~employee, member, or person~~ **A PERSON WITH INCOME** subject to
11 withholding under subsection (6) or (7) claims more than 9 personal
12 or dependency exemptions, claims a status that exempts the
13 ~~employee, member, or person~~ subject to withholding under subsection
14 (6) or (7) from withholding under this section.

15 (15) A person who disburses annuity payments pursuant to the
16 terms of a qualified charitable gift annuity is not required to
17 deduct and withhold a tax on those payments as prescribed under
18 subsection (1). As used in this subsection, "qualified charitable
19 gift annuity" means an annuity described under section 501(m)(5) of
20 the internal revenue code and issued by an organization exempt
21 under section 501(c)(3) of the internal revenue code.

22 (16) Notwithstanding the requirements of subsections (4) and
23 (5), if a flow-through entity receives an exemption certificate
24 from a member other than a nonresident individual, the flow-through
25 entity shall not withhold a tax on the distributive share of the
26 business income of that member if all of the following conditions
27 are met:

1 (a) The exemption certificate is completed by the member in
2 the form and manner prescribed by the department and certifies that
3 the member will do all of the following:

4 (i) File the returns required under this act.

5 (ii) Pay or withhold the tax required under this act on the
6 distributive share of the business income received from any flow-
7 through entity in which the member has an ownership or beneficial
8 interest, directly or indirectly through 1 or more other flow-
9 through entities.

10 (iii) Submit to the taxing jurisdiction of this state for
11 purposes of collection of the tax under this act together with
12 related interest and penalties under 1941 PA 122, MCL 205.1 to
13 205.31, imposed on the member with respect to the distributive
14 share of the business income of that member.

15 (b) The department may require the member to file the
16 exemption certificate with the department and provide a copy to the
17 flow-through entity.

18 (c) The department may require a flow-through entity that
19 receives an exemption certificate to attach a copy of the exemption
20 certificate to the annual reconciliation return as required by
21 section 711. A flow-through entity that is entirely exempt from the
22 withholding requirements of subsection (4) or (5) by this
23 subsection may be required to furnish a copy of the exemption
24 certificate in another manner prescribed by the department.

25 (d) A copy of the exemption certificate shall be retained by
26 the member and flow-through entity and made available to the
27 department upon request. Any copy of the exemption certificate

1 shall be maintained in a format and for the period required by 1941
2 PA 122, MCL 205.1 to 205.31.

3 (17) The department may revoke the election provided for in
4 subsection (16) if it determines that the member or a flow-through
5 entity is not abiding by the terms of the exemption certificate or
6 the requirements of subsection (16). If the department does revoke
7 the election option under subsection (16), the department shall
8 notify the affected flow-through entity that withholding is
9 required on the member under subsection (4) or (5), beginning 60
10 days after notice of revocation is received.

11 (18) Notwithstanding the requirements of subsections (4) and
12 (5), a flow-through entity is not required to withhold in
13 accordance with this section for a member that voluntarily elects
14 to file a return and pay the tax imposed by the Michigan business
15 tax act under section 680 or section 500 of the Michigan business
16 tax act, 2007 PA 36, MCL 208.1500.

17 (19) Notwithstanding the withholding requirements of
18 subsection (3), (4), or (5), a flow-through entity is not required
19 to comply with those withholding requirements to the extent that
20 the withholding would violate any of the following:

21 (a) Housing assistance payment programs distribution
22 restrictions under 24 CFR part 880, 881, 883, or 891.

23 (b) Rural housing service return on investment restrictions
24 under 7 CFR 3560.68 or 3560.305.

25 (c) Articles of incorporation or other document of
26 organization adopted pursuant to section 83 or 93 of the state
27 housing development authority act of 1966, 1966 PA 346, MCL

1 125.1483 and 125.1493.

2 Sec. 711. (1) Every person required by this part to deduct and
3 withhold taxes for a tax year on ~~compensation, winnings, or payoff~~
4 ~~on a winning ticket shall furnish to each employee, member, or~~
5 ~~person with winnings or a payoff on a winning ticket subject to~~
6 ~~withholding under this part on or before January 31 of the~~
7 ~~succeeding year~~ **INCOME OTHER THAN DISTRIBUTIVE SHARE OF INCOME FROM**
8 **A FLOW-THROUGH ENTITY SHALL FURNISH TO THE PERSON WHO RECEIVED THE**
9 **INCOME** a statement in duplicate **ON OR BEFORE JANUARY 31 OF THE**
10 **SUCCEEDING YEAR** of the total ~~compensation, winnings, or payoff on a~~
11 ~~winning ticket~~ **INCOME** paid during the tax year and the amount
12 deducted or withheld. However, if employment is terminated before
13 the close of a calendar year by a person that goes out of business
14 or permanently ceases to exist, then the statement required by this
15 subsection shall be issued within 30 days after the last
16 compensation, winnings, or payoff of a winning ticket is paid. A
17 duplicate of a statement made pursuant to this section and an
18 annual reconciliation return, MI-W3, shall be filed with the
19 department by February 28 of the succeeding year except that a
20 person that goes out of business or permanently ceases to exist
21 shall file the statement and the annual reconciliation return
22 within 30 days after going out of business or permanently ceasing
23 to exist. ~~A~~ **FOR TAX YEARS THAT BEGIN BEFORE JULY 1, 2016, A** flow-
24 through entity that ~~has withheld~~ **WAS REQUIRED TO WITHHOLD** taxes on
25 distributive shares of business income ~~reasonably expected to~~
26 ~~accrue~~ shall file an annual reconciliation return with the
27 department no later than the last day of the second month following

1 the end of the flow-through entity's federal tax year. The
2 department may require ~~the~~ **A** flow-through entity to file an annual
3 business income information return with the department on the due
4 date, including extensions, of its annual federal information
5 return.

6 (2) Every person required by this part to deduct or withhold
7 taxes shall make a return or report in form and content and at
8 times as prescribed by the department. An employer ~~or flow-through~~
9 ~~entity~~ that has entered into an agreement with a community college
10 pursuant to chapter 13 of the community college act of 1966, 1966
11 PA 331, MCL 389.161 to 389.166, and is required to deduct or
12 withhold taxes from compensation and make payments to a community
13 college pursuant to the agreement for a portion of those taxes
14 withheld shall, for as long as the agreement remains in effect,
15 delineate in the return or report required under this subsection
16 between the amount deducted or withheld and paid to the state and
17 that amount paid to a community college.

18 (3) Every person ~~that~~ **WHO** receives a ~~pension or annuity~~
19 ~~payment, employee, member, or person with winnings or a payoff on a~~
20 ~~winning ticket~~ **INCOME** subject to withholding under this part shall
21 furnish to the person ~~that disburses the pension or annuity~~
22 ~~payment, his or her employer, flow through entity, eligible~~
23 ~~production company, casino licensee, race meeting licensee, and~~
24 ~~track licensee~~ **REQUIRED BY THIS PART TO DEDUCT AND WITHHOLD TAXES**
25 information required to make an accurate withholding. A person ~~that~~
26 **WHO** receives ~~pension or annuity payments, employee, member, or~~
27 ~~person with winnings or a payoff on a winning ticket~~ **INCOME** subject

1 to withholding under this part shall file with the person ~~that~~
2 ~~disburses the pension or annuity payment, his or her employer,~~
3 ~~flow through entity, eligible production company, casino licensee,~~
4 ~~race meeting licensee, and track licensee~~ **REQUIRED BY THIS PART TO**
5 **DEDUCT AND WITHHOLD TAXES** revised information within 10 days after
6 a decrease in the number of exemptions or a change in status from a
7 nonresident to a resident. The person who receives ~~pension or~~
8 ~~annuity payments, employee, nonresident member, or person with~~
9 ~~winnings or a payoff on a winning ticket~~ **INCOME** subject to
10 withholding under this part may file revised information when the
11 number of exemptions increases or when a change in status occurs
12 from that of a resident of this state to a nonresident of this
13 state. Revised information shall not be given retroactive effect
14 for withholding purposes. A person required by this part to deduct
15 and withhold taxes shall rely on this information for withholding
16 purposes unless directed by the department to withhold on some
17 other basis. If a person who receives ~~a retirement or annuity~~
18 ~~payment, employee, member, or person with winnings or a payoff on a~~
19 ~~winning ticket~~ **INCOME** subject to withholding under this part fails
20 or refuses to furnish information, the person required by this part
21 to deduct and withhold taxes shall withhold **AT** the full rate of tax
22 from the person's ~~retirement or annuity payment, employee's total~~
23 ~~compensation, the member's distributive share of business income~~
24 ~~reasonably expected to accrue, or the winnings of a person with~~
25 ~~winnings or a payoff on a winning ticket~~ **INCOME** subject to
26 withholding under this part.

27 Enacting section 1. This amendatory act takes effect July 1,

1 2016.