

HOUSE BILL No. 5777

February 20, 2008, Introduced by Reps. Pearce, Meekhof, Rick Jones and Casperson and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending sections 51a, 351, 355, and 365 (MCL 206.51a, 206.351, 206.355, and 206.365), section 51a as amended by 1996 PA 484, section 351 as amended by 2003 PA 22, section 355 as amended by 2003 PA 48, and section 365 as amended by 2003 PA 47.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 51a. (1) Notwithstanding any other provision of this act
2 and for tax years beginning after December 31, 1996, an eligible
3 taxpayer may elect to pay the tax imposed by this act calculated by
4 multiplying taxable compensation, less an amount equal to the
5 personal and dependency exemptions allowed as a subtraction under
6 section 30(2), (3), and (4), by the rate established in section 51.

7 (2) Except as provided in subsection (1), an eligible taxpayer
8 who elects to pay the tax imposed by this act calculated under this

1 section shall not claim any exemption, deduction, or credit allowed
2 under this act other than the credits allowed under all of the
3 following sections:

4 (a) The credit for taxes withheld under section 251.

5 ~~—— (b) The prescription drug credit under section 273.~~

6 (B) ~~(c)~~ The home heating credit under section 527a.

7 (3) An eligible taxpayer who elects to pay the tax imposed by
8 this act calculated under this section is not required to file an
9 annual return under this act.

10 (4) An eligible taxpayer who files a withholding exemption
11 certificate to elect to pay the tax imposed by this act calculated
12 under this section may file an annual return and pay the tax
13 calculated under section 51.

14 (5) The statute of limitations provided in ~~Act No. 122 of the~~
15 ~~Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan~~
16 ~~Compiled Laws 1941 PA 122, MCL 205.1 TO 205.31~~, begins to run on
17 the date that the annual return is due for the tax year for which
18 the taxpayer has filed an election to pay the tax imposed by this
19 act calculated under this section.

20 (6) The department may enforce the collection of the tax
21 imposed under this act and calculated under this section to the
22 extent the tax withheld under section 351 is less than the tax
23 imposed by this act and calculated under this section.

24 (7) For the 1998 tax year and each year after 1998 that the
25 no-form option allowed under this section is in effect, the
26 department shall file a report not later than July 1 with the house
27 tax policy committee and the senate finance committee that contains

1 all of the following information about the taxpayers who elect to
2 pay the tax imposed by this act pursuant to this section:

3 (a) The total number of taxpayers.

4 (b) The number of taxpayers by county and city.

5 (c) The average income of the taxpayers.

6 (8) As used in this section:

7 (a) "Eligible taxpayer" means a resident who meets both of the
8 following criteria:

9 (i) Has income for the tax year in total or from any 1 source,
10 other than taxable compensation or income described in subdivision
11 (b), (i), (ii), or (iii), of less than \$100.00 for a single return or
12 \$200.00 for a joint return.

13 (ii) Has filed a withholding exemption certificate to elect to
14 pay the tax imposed by this act calculated under this section for
15 the tax year.

16 (b) "Taxable compensation" means compensation from which tax
17 has been withheld pursuant to section 351(1) or ~~(7)~~ **(11)**, except
18 the following:

19 (i) Compensation described in section 30(1)(e) or 30(1)(f)(i).

20 (ii) Social security benefits as defined in section 86 of the
21 internal revenue code.

22 (iii) Retirement benefits, pension benefits, or benefits from a
23 retirement annuity policy in which payments are made for life to a
24 senior citizen, other than benefits described in section 30(1)(e)
25 or 30(1)(f)(i), or described in section 86 of the internal revenue
26 code, not to exceed the amounts allowed as a deduction under
27 section ~~30(1)(f)(v)~~ **30(1)(F)(iv)**.

1 Sec. 351. (1) Every employer in this state required under the
2 provisions of the internal revenue code to withhold a tax on the
3 compensation of an individual, except as otherwise provided, shall
4 deduct and withhold a tax in an amount computed by applying, except
5 as provided by subsection ~~(9)~~-(10), the rate prescribed in section
6 51 to the remainder of the compensation after deducting from
7 compensation the same proportion of the total amount of personal
8 and dependency exemptions of the individual allowed under this act
9 that the period of time covered by the compensation is of 1 year.

10 The commissioner may prescribe withholding tables that may be used
11 by employers to compute the amount of tax required to be withheld.

12 (2) EVERY PAYOR REQUIRED UNDER THE PROVISIONS OF THE INTERNAL
13 REVENUE CODE TO WITHHOLD A TAX ON A PENSION, ANNUITY, OR OTHER
14 DEFERRED INCOME PAYMENT THAT IS ALSO SUBJECT TO THE TAX IMPOSED BY
15 THIS ACT TO A RESIDENT OF THIS STATE SHALL, IF REQUESTED BY THE
16 RESIDENT PAYEE, DEDUCT AND WITHHOLD A TAX IN AN AMOUNT COMPUTED IN
17 ACCORDANCE WITH SUBSECTION (1) OR AN AMOUNT AS SPECIFIED BY THE
18 PAYEE, WHICHEVER IS GREATER. THE PAYEE SHALL PROVIDE THE PAYOR WITH
19 THE INFORMATION NECESSARY FOR THE PAYOR TO MAKE AN ACCURATE
20 WITHHOLDING.

21 (3) ~~(2)~~—Every flow-through entity in this state shall withhold
22 a tax in an amount computed by applying the rate prescribed in
23 section 51 to the share of taxable income available for
24 distribution of each nonresident member after deducting from that
25 distributive income the same proportion of the total amount of
26 personal and dependency exemptions of the individual allowed under
27 this act that the period of time covered by the distributive income

1 is of 1 year. If a flow-through entity is a nonresident member of a
2 separate flow-through entity in this state, the flow-through entity
3 in this state of which it is a member shall withhold the tax as
4 required by this subsection on behalf of the flow-through entity
5 that is a nonresident member and all nonresident members of that
6 flow-through entity that is a nonresident member.

7 (4) ~~(3)~~—Every casino licensee shall withhold a tax in an
8 amount computed by applying the rate prescribed in section 51 to
9 the winnings of a nonresident reportable by the casino licensee
10 under the internal revenue code.

11 (5) ~~(4)~~—Every race meeting licensee or track licensee shall
12 withhold a tax in an amount computed by applying the rate
13 prescribed in section 51 to a payoff price on a winning ticket of a
14 nonresident reportable by the race meeting licensee or track
15 licensee under the internal revenue code that is the result of
16 pari-mutuel wagering at a licensed race meeting.

17 (6) ~~(5)~~—Every casino licensee or race meeting licensee or
18 track licensee shall report winnings of a resident reportable by
19 the casino licensee or race meeting licensee or track licensee
20 under the internal revenue code to the department in the same
21 manner and format as required under the internal revenue code.

22 (7) ~~(6)~~—The taxes withheld under this section shall accrue to
23 the state on the last day of the month in which the taxes are
24 withheld but shall be returned and paid to the department by the
25 employer, **PAYOR**, flow-through entity, casino licensee, or race
26 meeting licensee or track licensee within 15 days after the end of
27 any month or as provided in section 355, except prior to July 1,

1 1993, taxes deposited pursuant to section 19(2) of 1941 PA 122, MCL
2 205.19, are accrued on the last day of the filing period.

3 (8) ~~(7)~~—An employer, **PAYOR**, flow-through entity, casino
4 licensee, or race meeting licensee or track licensee required by
5 this section to deduct and withhold taxes on compensation, **PENSION**,
6 **ANNUITY, OR OTHER DEFERRED INCOME PAYMENT UNDER SUBSECTION (2)**, a
7 share of income available for distribution on which withholding is
8 required under subsection ~~(2)~~—(3), winning on which withholding is
9 required under subsection ~~(3)~~—(4), or a payoff price on which
10 withholding is required under subsection ~~(4)~~—(5) holds the amount
11 of tax withheld as a trustee for the state, is liable for the
12 payment of the tax to the state, and is not liable to any
13 individual for the amount of the payment.

14 (9) ~~(8)~~—An employer in this state is not required to deduct
15 and withhold a tax on the compensation paid to a nonresident
16 individual employee, who, under section 256, may claim a tax credit
17 equal to or in excess of the tax estimated to be due for the tax
18 year or is exempted from liability for the tax imposed by this act.
19 In each tax year, the nonresident individual shall furnish to the
20 employer, on a form approved by the department, a verified
21 statement of nonresidence.

22 (10) ~~(9)~~—An employer, **PAYOR**, flow-through entity, casino
23 licensee, or race meeting licensee or track licensee required to
24 withhold a tax under this act, by the fifteenth day of the
25 following month, shall provide the department with a copy of any
26 exemption certificate on which the employee, nonresident member, or
27 person subject to withholding under subsection ~~(3)~~ ~~or~~ (2), (4), OR

(5) claims more than 9 personal or dependency exemptions, claims a status that exempts the employee, nonresident member, or person subject to withholding under subsection ~~(3) or~~ (2), (4), OR (5) from withholding under this section, or elects to pay the tax imposed by this act calculated under section 51a.

(11) ~~(10)~~—An employer shall deduct and withhold the tax imposed by this act calculated under section 51a for a resident who files an exemption certificate under subsection ~~(9)~~ (10) to elect to pay the tax calculated under section 51a.

(12) ~~(11)~~—The exemption certificate required by this section shall include the following statement, "Electing to file using the no-form option may not be for everyone who is eligible. If a taxpayer chooses the no-form option, he or she may not be eligible for some of the credits allowed under this act including the property tax credit allowed under sections 520 and 522, the tuition tax credit allowed under section 274, and the city income tax credit allowed under section 257.".

(13) ~~(12)~~—As used in this section:

(a) "Casino" means that term as defined in section 110.

(b) "Casino licensee" means a person licensed to operate a casino under the Michigan gaming control and revenue act, ~~the~~ Initiated Law of 1996—1996 IL 1, MCL 432.201 to 432.226.

(C) "PAYOR" MEANS A PERSON OR PLAN ADMINISTRATOR WITH RESPECT TO A PAYMENT MADE UNDER SECTION 3405 OF THE INTERNAL REVENUE CODE THAT IS TAXABLE UNDER THIS ACT.

(D) ~~(e)~~—"Race meeting licensee" and "track licensee" mean a person to whom a race meeting license or track license is issued

1 pursuant to section 8 of the horse racing law of 1995, 1995 PA 279,
2 MCL 431.308.

3 Sec. 355. (1) All provisions relating to the administration,
4 collection, and enforcement of this act apply to the employer,
5 **PAYOR**, flow-through entity, casino licensee, or race meeting
6 licensee or track licensee required to withhold taxes and to the
7 taxes required to be withheld. If the department has reasonable
8 grounds to believe that an employer, **PAYOR**, flow-through entity,
9 casino licensee, or race meeting licensee or track licensee will
10 not pay taxes withheld to the state as prescribed by this act, or
11 to provide a more efficient administration, the department may
12 require the employer, **PAYOR**, flow-through entity, casino licensee,
13 or race meeting licensee or track licensee to make the return and
14 pay to the department the tax deducted and withheld at other than
15 monthly periods, or from time to time, or require the employer,
16 **PAYOR**, flow-through entity, casino licensee, or race meeting
17 licensee or track licensee to deposit the tax in a bank approved by
18 the department in a separate account, in trust for the department
19 and payable to the department, and to keep the amount of the taxes
20 in the account until payment over to the department. **IF A PAYOR**
21 **FAILS OR REFUSES TO DEDUCT AND WITHHOLD THE TAX DUE FROM ANY**
22 **TAXPAYER AS REQUIRED BY THE DEPARTMENT PURSUANT TO THIS SECTION,**
23 **THE PAYOR SHALL BE PERSONALLY LIABLE FOR THAT TAX AND THE**
24 **DEPARTMENT MAY PROCEED AGAINST THE PAYOR AS PROVIDED UNDER 1941 PA**
25 **122, MCL 205.1 TO 205.31.**

26 (2) Every publicly traded partnership as that term is defined
27 under section 7704 of the internal revenue code that has equity

securities registered with the securities and exchange commission under section 12 of title I of the securities and exchange act of 1934, ~~chapter 404, 48 Stat. 881, 15 U.S.C. USC 78l~~, shall file on or before each August 31 all unitholder information from the publicly traded partnership's schedule K-1 for the immediately preceding calendar year by paper or electronic format on a form prescribed by the department.

(3) As used in this section:

(a) "Casino" means that term as defined in section 110.

(b) "Casino licensee" means a person licensed to operate a casino under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226.

(C) "PAYOR" MEANS A PERSON OR PLAN ADMINISTRATOR WITH RESPECT TO A PAYMENT MADE UNDER SECTION 3405 OF THE INTERNAL REVENUE CODE THAT IS TAXABLE UNDER THIS ACT.

(D) ~~(e)~~ "Race meeting licensee" and "track licensee" mean a person to whom a race meeting license or track license is issued pursuant to section 8 of the horse racing law of 1995, 1995 PA 279, MCL 431.308.

Sec. 365. (1) Every employer, **PAYOR**, flow-through entity, casino licensee, and race meeting licensee and track licensee required by this act to deduct and withhold taxes for a tax year on compensation, **PENSION, ANNUITY, OR OTHER DEFERRED INCOME PAYMENT**, share of income available for distribution, winnings, or payoff on a winning ticket shall furnish to each employee, nonresident member, or person with winnings or a payoff on a winning ticket subject to withholding under this act on or before January 31 of

1 the succeeding year a statement in duplicate of the total
2 compensation, **PENSION, ANNUITY, OR OTHER DEFERRED INCOME PAYMENT**,
3 share of income available for distribution, winnings, or payoff on
4 a winning ticket paid during the tax year and the amount deducted
5 or withheld. However, if employment is terminated before the close
6 of a calendar year by an employer who goes out of business or
7 permanently ceases to be an employer in this state, or a **PAYOR**,
8 flow-through entity, casino licensee, race meeting licensee, or
9 track licensee goes out of business or permanently ceases to be a
10 **PAYOR**, flow-through entity, casino licensee, race meeting licensee,
11 or track licensee before the close of a calendar year, then the
12 statement required by this subsection shall be issued within 30
13 days after the last compensation, **PENSION, ANNUITY, OR OTHER**
14 **DEFERRED INCOME PAYMENT**, share of income available for
15 distribution, winnings, or payoff of a winning ticket is paid. A
16 duplicate of a statement made pursuant to this section and an
17 annual reconciliation return, MI-W3, shall be filed with the
18 department by February 28 of the succeeding year except that an
19 employer, **PAYOR**, flow-through entity, casino licensee, and race
20 meeting licensee and track licensee who goes out of business or
21 permanently ceases to be an employer, **PAYOR**, flow-through entity,
22 casino licensee, and race meeting licensee and track licensee shall
23 file the statement and the annual reconciliation return within 30
24 days after going out of business or permanently ceasing to be an
25 employer, **PAYOR**, flow-through entity, casino licensee, and race
26 meeting licensee and track licensee.

27 (2) Every employer, **PAYOR**, flow-through entity, casino

1 licensee, and race meeting licensee and track licensee required by
2 this act to deduct or withhold taxes from compensation, **PENSION,**
3 **ANNUITY, OR OTHER DEFERRED INCOME PAYMENT,** share of income
4 available for distribution, winnings, or payoff on a winning ticket
5 shall make a return or report in form and content and at times as
6 prescribed by the department.

7 (3) Every employee, nonresident member, or person with
8 winnings or a payoff on a winning ticket subject to withholding
9 under this act shall furnish to his or her employer, flow-through
10 entity, casino licensee, and race meeting licensee and track
11 licensee information required for the employer, flow-through
12 entity, casino licensee, and race meeting licensee and track
13 licensee to make an accurate withholding. An employee, nonresident
14 member, or person with winnings or a payoff on a winning ticket
15 subject to withholding under this act shall file with his or her
16 employer, flow-through entity, casino licensee, and race meeting
17 licensee and track licensee revised information within 10 days
18 after a decrease in the number of exemptions or a change in status
19 from a nonresident to a resident. An employee shall file revised
20 information with his or her employer within 10 days after the
21 employee completes the residency requirements under section
22 31(11)(d), and when a change of status occurs from resident of a
23 renaissance zone to nonresident of a renaissance zone. Within 10
24 days after an employer receives revised information from an
25 employee who completes the residency requirements under section
26 31(11)(d), the employer shall forward a copy of that revised
27 information to the department. The employee, nonresident member, or

1 person with winnings or a payoff on a winning ticket subject to
 2 withholding under this act may file revised information when the
 3 number of exemptions increases or when a change in status occurs
 4 from that of a resident of this state to a nonresident of this
 5 state. Revised information shall not be given retroactive effect
 6 for withholding purposes. An employer, **PAYOR**, flow-through entity,
 7 casino licensee, and race meeting licensee and track licensee shall
 8 rely on this information for withholding purposes unless directed
 9 by the department to withhold on some other basis. If an employee,
 10 **PAYEE**, nonresident member, or person with winnings or a payoff on a
 11 winning ticket subject to withholding under this act fails or
 12 refuses to furnish information, the employer, **PAYOR**, flow-through
 13 entity, casino licensee, and race meeting licensee and track
 14 licensee shall withhold the full rate of tax from the employee's
 15 total compensation, **THE PAYEE'S PENSION, ANNUITY, OR OTHER DEFERRED**
 16 **INCOME PAYMENT**, the nonresident member's share of income available
 17 for distribution, or the winnings of a person with winnings or a
 18 payoff on a winning ticket subject to withholding under this act.
 19 As used in this subsection, "renaissance zone" means a renaissance
 20 zone designated pursuant to the Michigan renaissance zone act, 1996
 21 PA 376, MCL 125.2681 to 125.2696.

22 (4) As used in this section:

23 (a) "Casino" means that term as defined in section 110.

24 (b) "Casino licensee" means a person licensed to operate a
 25 casino under the Michigan gaming control and revenue act, ~~the~~
 26 ~~Initiated Law of 1996~~ **1996 IL 1**, MCL 432.201 to 432.226.

27 (C) **"PAYOR" MEANS A PERSON OR PLAN ADMINISTRATOR WITH RESPECT**

1 TO A PAYMENT MADE UNDER SECTION 3405 OF THE INTERNAL REVENUE CODE
2 THAT IS TAXABLE UNDER THIS ACT.

3 (D) ~~(e)~~—"Race meeting licensee" and "track licensee" mean a
4 person to whom a race meeting license or track license is issued
5 pursuant to section 8 of the horse racing law of 1995, 1995 PA 279,
6 MCL 431.308.