

HOUSE BILL No. 6289

June 26, 2008, Introduced by Reps. Meisner and Condino and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending section 201 (MCL 208.1201), as amended by 2007 PA 145.

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 adjustment in subsection (5) after
10 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 (g) To the extent included in federal taxable income, deduct
16 interest income derived from United States obligations.

17 (h) To the extent included in federal taxable income, deduct
18 any earnings that are net earnings from self-employment as defined
19 under section 1402 of the internal revenue code of the taxpayer or
20 a partner or limited liability company member of the taxpayer
21 except to the extent that those net earnings represent a reasonable
22 return on capital.

23 (i) Subject to the limitation provided under this subdivision,
24 if the book-tax differences for the first fiscal period ending
25 after July 12, 2007 result in a deferred liability for a person
26 subject to tax under this act, deduct the following percentages of
27 the total book-tax difference for each qualifying asset, for each

1 of the successive 15 tax years beginning with the 2015 tax year:

2 (i) For the 2015 through 2019 tax years, 4%.

3 (ii) For the 2020 through 2024 tax years, 6%.

4 (iii) For the 2025 through 2029 tax years, 10%.

5 (J) TO THE EXTENT INCLUDED IN FEDERAL TAXABLE INCOME, DEDUCT
6 ANY INCOME DERIVED FROM THE CANCELLATION OF DEBT, OR OTHER
7 DISPOSITION OF PROPERTY, RELATED TO THE FORECLOSURE OF PROPERTY
8 OWNED BY THE TAXPAYER USED IN THE TAXPAYER'S REGULAR BUSINESS
9 ACTIVITY OR ANY OTHER TRANSACTION SUCH AS A DEED IN LIEU OF
10 FORECLOSURE OR SALE BY A COURT-APPOINTED RECEIVER ENTERED INTO
11 UNDER THE THREAT OF FORECLOSURE ON PROPERTY OWNED BY THE TAXPAYER
12 AND USED IN THE TAXPAYER'S REGULAR BUSINESS ACTIVITY.

13 (3) The deduction under subsection (2)(i) shall not exceed the
14 amount necessary to offset the net deferred tax liability of the
15 taxpayer as computed in accordance with generally accepted
16 accounting principles which would otherwise result from the
17 imposition of the business income tax under this section and the
18 modified gross receipts tax under section 203 if the deduction
19 provided under this subdivision were not allowed. The deduction
20 under subsection (2)(i) is intended to flow through and reduce the
21 surcharge imposed and levied under section 281. For purposes of the
22 calculation of the deduction under subsection (2)(i), a book-tax
23 difference shall only be used once in the calculation of the
24 deduction arising from the taxpayer's business income tax base
25 under this section and once in the calculation of the deduction
26 arising from the taxpayer's modified gross receipts tax base under
27 section 203. The adjustment under subsection (2)(i) shall be

1 calculated without regard to the federal effect of the deduction.
2 If the adjustment under subsection (2)(i) is greater than the
3 taxpayer's business income tax base, any adjustment that is unused
4 may be carried forward and applied as an adjustment to the
5 taxpayer's business income tax base before apportionment in future
6 years. In order to claim this deduction, the department may require
7 the taxpayer to report the amount of this deduction on a form as
8 prescribed by the department that is to be filed on or after the
9 date that the first quarterly return and estimated payment are due
10 under this act. As used in subsection (2)(i) and this subsection:

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

16 (b) "Qualifying asset" means any asset shown on the person's
17 books and records for the first fiscal period ending after July 12,
18 2007, in accordance with generally accepted accounting principles.

19 (4) For purposes of subsections (2) and (3), the business
20 income of a unitary business group is the sum of the business
21 income of each person, other than a foreign operating entity or a
22 person subject to the tax imposed under chapter 2A or 2B, included
23 in the unitary business group less any items of income and related
24 deductions arising from transactions including dividends between
25 persons included in the unitary business group.

26 (5) Deduct any available business loss incurred after December
27 31, 2007. As used in this subsection, "business loss" means a

1 negative business income taxable amount after allocation or
2 apportionment. The business loss shall be carried forward to the
3 year immediately succeeding the loss year as an offset to the
4 allocated or apportioned business income tax base, then
5 successively to the next 9 taxable years following the loss year or
6 until the loss is used up, whichever occurs first, but for not more
7 than 10 taxable years after the loss year.