

HOUSE BILL No. 4949

September 13, 2011, Introduced by Rep. Gilbert and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending section 623 (MCL 206.623), as added by 2011 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 623. (1) Except as otherwise provided in this part, there
2 is levied and imposed a corporate income tax on every taxpayer with
3 business activity within this state or ownership interest or
4 beneficial interest in a flow-through entity that has business
5 activity in this state unless prohibited by 15 USC 381 to 384. The
6 corporate income tax is imposed on the corporate income tax base,
7 after allocation or apportionment to this state, at the rate of
8 6.0%.

9 (2) The corporate income tax base means a taxpayer's business
10 income subject to the following adjustments, before allocation or
11 apportionment, and the adjustment in subsection (4) after

1 allocation or apportionment:

2 (a) Add interest income and dividends derived from obligations
3 or securities of states other than this state, in the same amount
4 that was excluded from federal taxable income, less the related
5 portion of expenses not deducted in computing federal taxable
6 income because of sections 265 and 291 of the internal revenue
7 code.

8 (b) Add all taxes on or measured by net income ~~and~~ **INCLUDING**
9 the tax imposed under this part to the extent that the taxes were
10 deducted in arriving at federal taxable income.

11 (c) Add any carryback or carryover of a net operating loss to
12 the extent deducted in arriving at federal taxable income.

13 (d) To the extent included in federal taxable income, deduct
14 dividends and royalties received from persons other than United
15 States persons and foreign operating entities, including, but not
16 limited to, amounts determined under section 78 of the internal
17 revenue code or sections 951 to 964 of the internal revenue code.

18 (e) Except as otherwise provided under this subdivision, to
19 the extent deducted in arriving at federal taxable income, add any
20 royalty, interest, or other expense paid to a person related to the
21 taxpayer by ownership or control for the use of an intangible asset
22 if the person is not included in the taxpayer's unitary business
23 group. The addition of any royalty, interest, or other expense
24 described under this subdivision is not required to be added if the
25 taxpayer can demonstrate that the transaction has a nontax business
26 purpose, is conducted with arm's-length pricing and rates and terms
27 as applied in accordance with sections 482 and 1274(d) of the

1 internal revenue code, and 1 of the following is true:

2 (i) The transaction is a pass through of another transaction
3 between a third party and the related person with comparable rates
4 and terms.

5 (ii) An addition would result in double taxation. For purposes
6 of this subparagraph, double taxation exists if the transaction is
7 subject to tax in another jurisdiction.

8 (iii) An addition would be unreasonable as determined by the
9 **STATE** treasurer.

10 (iv) The related person recipient of the transaction is
11 organized under the laws of a foreign nation which has in force a
12 comprehensive income tax treaty with the United States.

13 (f) To the extent included in federal taxable income, deduct
14 interest income derived from United States obligations.

15 (g) For tax years beginning after December 31, 2011, eliminate
16 all of the following:

17 (i) Income from producing oil and gas to the extent included in
18 federal taxable income.

19 (ii) Expenses of producing oil and gas to the extent deducted
20 in arriving at federal taxable income.

21 (3) For purposes of subsection (2), the business income of a
22 unitary business group is the sum of the business income of each
23 person included in the unitary business group less any items of
24 income and related deductions arising from transactions including
25 dividends between persons included in the unitary business group.

26 (4) Deduct any available business loss incurred after December
27 31, 2011. 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 corporate 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~~
7 ~~more than 10 taxable years after the loss year.~~

8 (5) As used in this section, "oil and gas" means oil and gas
9 that is subject to severance tax under 1929 PA 48, MCL 205.301 to
10 205.317.

11 Enacting section 1. This amendatory act takes effect January
12 1, 2012.