

HOUSE BILL No. 4962

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

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 665 (MCL 206.665), as added by 2011 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 665. (1) Sales of the taxpayer in this state are
2 determined as follows:

3 (a) Sales of tangible personal property are in this state if
4 the property is shipped or delivered, or, in the case of
5 electricity and gas, the contract requires the property to be
6 shipped or delivered, to any purchaser within this state based on
7 the ~~ultimate~~ destination at the point that the property comes to
8 rest regardless of the free on board point or other conditions of
9 the sales.

10 (b) Receipts from the sale, lease, rental, or licensing of

1 real property are in this state if that property is located in this
2 state.

3 (c) Receipts from the lease or rental of tangible personal
4 property are sales in this state to the extent that the property is
5 ~~utilized~~**USED** in this state. The extent of utilization of tangible
6 personal property in this state is determined by multiplying the
7 receipts by a fraction, the numerator of which is the number of
8 days of physical location of the property in this state during the
9 lease or rental period in the tax year and the denominator of which
10 is the number of days of physical location of the property
11 everywhere during all lease or rental periods in the tax year. **FOR**
12 **APPORTIONMENT PURPOSES ONLY, PREWRITTEN COMPUTER SOFTWARE IS USED**
13 **IN THIS STATE WHEN THE COMPUTER HARDWARE ACCESSING THE SOFTWARE IS**
14 **PHYSICALLY LOCATED IN THIS STATE.** If the physical location of the
15 property during the lease or rental period is unknown or cannot be
16 determined, the tangible personal property is ~~utilized~~**USED** in the
17 state in which the property was located at the time the lease or
18 rental payer obtained possession.

19 (d) Receipts from the lease or rental of mobile transportation
20 property owned by the taxpayer are in this state to the extent that
21 the property is used in this state. The extent to which an aircraft
22 will be deemed to be used in this state and the amount of receipts
23 that is to be included in the numerator of this state's sales
24 factor are determined by multiplying all the receipts from the
25 lease or rental of the aircraft by a fraction, the numerator of
26 which is the number of landings of the aircraft in this state and
27 the denominator of which is the total number of landings of the

1 aircraft. If the extent of the use of any transportation property
2 within this state cannot be determined, then the receipts are in
3 this state if the property has its principal base of operations in
4 this state.

5 (e) Royalties and other income received for the use of or for
6 the privilege of using intangible property, including patents,
7 know-how, formulas, designs, processes, patterns, copyrights, trade
8 names, service names, franchises, licenses, contracts, customer
9 lists, custom computer software, or similar items, are attributed
10 to the state in which the property is used by the purchaser. If the
11 property is used in more than 1 state, the royalties or other
12 income shall be apportioned to this state pro rata according to the
13 portion of use in this state. If the portion of use in this state
14 cannot be determined, the royalties or other income shall be
15 excluded from both the numerator and the denominator. Intangible
16 property is used in this state if the purchaser uses the intangible
17 property or the rights to the intangible property in the regular
18 course of its business operations in this state, regardless of the
19 location of the purchaser's customers.

20 (2) Sales from the performance of services are in this state
21 and attributable to this state as follows:

22 (a) Except as otherwise provided in this section, all receipts
23 from the performance of services are included in the numerator of
24 the apportionment factor if the recipient of the services receives
25 all of the benefit of the services in this state. If the recipient
26 of the services receives some of the benefit of the services in
27 this state, the receipts are included in the numerator of the

1 apportionment factor in proportion to the extent that the recipient
2 receives benefit of the services in this state.

3 (b) Sales derived from securities brokerage services
4 attributable to this state are determined by multiplying the total
5 dollar amount of receipts from securities brokerage services by a
6 fraction, the numerator of which is the sales of securities
7 brokerage services to customers within this state, and the
8 denominator of which is the sales of securities brokerage services
9 to all customers. Receipts from securities brokerage services
10 include commissions on transactions, the spread earned on principal
11 transactions in which the broker buys or sells from its account,
12 total margin interest paid on behalf of brokerage accounts owned by
13 the broker's customers, and fees and receipts of all kinds from the
14 underwriting of securities. If receipts from brokerage services can
15 be associated with a particular customer, but it is impractical to
16 associate the receipts with the address of the customer, then the
17 address of the customer shall be presumed to be the address of the
18 branch office that generates the transactions for the customer.

19 (c) Sales of services that are derived directly or indirectly
20 from the sale of management, distribution, administration, or
21 securities brokerage services to, or on behalf of, a regulated
22 investment company or its beneficial owners, including receipts
23 derived directly or indirectly from trustees, sponsors, or
24 participants of employee benefit plans that have accounts in a
25 regulated investment company, shall be attributable to this state
26 to the extent that the shareholders of the regulated investment
27 company are domiciled within this state. For purposes of this

1 subdivision, "domicile" means the shareholder's mailing address on
2 the records of the regulated investment company. If the regulated
3 investment company or the person providing management services to
4 the regulated investment company has actual knowledge that the
5 shareholder's primary residence or principal place of business is
6 different than the shareholder's mailing address, then the
7 shareholder's primary residence or principal place of business is
8 the shareholder's domicile. A separate computation shall be made
9 with respect to the receipts derived from each regulated investment
10 company. The total amount of sales attributable to this state shall
11 be equal to the total receipts received by each regulated
12 investment company multiplied by a fraction determined as follows:

13 (i) The numerator of the fraction is the average of the sum of
14 the beginning-of-year and end-of-year number of shares owned by the
15 regulated investment company shareholders who have their domicile
16 in this state.

17 (ii) The denominator of the fraction is the average of the sum
18 of the beginning-of-year and end-of-year number of shares owned by
19 all shareholders.

20 (iii) For purposes of the fraction, the year shall be the tax
21 year of the regulated investment company that ends with or within
22 the tax year of the taxpayer.

23 (3) Receipts from the origination of a loan or gains from the
24 sale of a loan secured by residential real property are deemed a
25 sale in this state only if 1 or more of the following apply:

26 (a) The real property is located in this state.

27 (b) The real property is located both within this state and 1

1 or more other states and more than 50% of the fair market value of
2 the real property is located within this state.

3 (c) More than 50% of the real property is not located in any 1
4 state and the borrower is located in this state.

5 (4) Interest from loans secured by real property is in this
6 state if the property is located within this state, if the property
7 is located both within this state and 1 or more other states and if
8 more than 50% of the fair market value of the real property is
9 located within this state, or if more than 50% of the fair market
10 value of the real property is not located within any 1 state but
11 the borrower is located in this state. The determination of whether
12 the real property securing a loan is located within this state
13 shall be made as of the time the original agreement was made and
14 any and all subsequent substitutions of collateral shall be
15 disregarded.

16 (5) Interest from a loan not secured by real property is in
17 this state if the borrower is located in this state.

18 (6) Gains from the sale of a loan not secured by real
19 property, including income recorded under the coupon stripping
20 rules of section 1286 of the internal revenue code, are in this
21 state if the borrower is in this state.

22 (7) Receipts from credit card receivables, including interest,
23 fees, and penalties from credit card receivables and receipts from
24 fees charged to cardholders, such as annual fees, are in this state
25 if the billing address of the cardholder is in this state.

26 (8) Receipts from the sale of credit card or other receivables
27 are in this state if the billing address of the customer is in this

1 state. Credit card issuer's reimbursements fees are in this state
2 if the billing address of the cardholder is in this state. Receipts
3 from merchant discounts, computed net of any cardholder
4 chargebacks, but not reduced by any interchange transaction fees or
5 by any issuer's reimbursement fees paid to another for charges made
6 by its cardholders, are in this state if the commercial domicile of
7 the merchant is in this state.

8 (9) Loan servicing fees derived from loans of another secured
9 by real property are in this state if the real property is located
10 in this state, if the real property is located both within and
11 outside of this state and 1 or more states if more than 50% of the
12 fair market value of the real property is located in this state, or
13 if more than 50% of the fair market value of the real property is
14 not located in any 1 state but the borrower is located in this
15 state. Loan servicing fees derived from loans of another not
16 secured by real property are in this state if the borrower is
17 located in this state. If the location of the security cannot be
18 determined, then loan servicing fees for servicing either the
19 secured or the unsecured loans of another are in this state if the
20 lender to whom the loan servicing service is provided is located in
21 this state.

22 (10) Receipts from the sale of securities and other assets
23 from investment and trading activities, including, but not limited
24 to, interest, dividends, and gains are in this state in either of
25 the following circumstances:

26 (a) The person's customer is in this state.

27 (b) If the location of the person's customer cannot be

1 determined, both of the following apply:

2 (i) Interest, dividends, and other income from investment
3 assets and activities and from trading assets and activities,
4 including, but not limited to, investment securities; trading
5 account assets; federal funds; securities purchased and sold under
6 agreements to resell or repurchase; options; futures contracts;
7 forward contracts; notional principal contracts such as swaps;
8 equities; and foreign currency transactions are in this state if
9 the average value of the assets is assigned to a regular place of
10 business of the taxpayer within this state. Interest from federal
11 funds sold and purchased and from securities purchased under resale
12 agreements and securities sold under repurchase agreements is in
13 this state if the average value of the assets is assigned to a
14 regular place of business of the taxpayer within this state. The
15 amount of receipts and other income from investment assets and
16 activities is in this state if assets are assigned to a regular
17 place of business of the taxpayer within this state.

18 (ii) The amount of receipts from trading assets and activities,
19 including, but not limited to, assets and activities in the matched
20 book, in the arbitrage book, and foreign currency transactions, but
21 excluding amounts otherwise sourced in this section, is in this
22 state if the assets are assigned to a regular place of business of
23 the taxpayer within this state.

24 (11) Receipts from transportation services rendered by a
25 person subject to tax in another state are in this state and shall
26 be attributable to this state as follows:

27 (a) Except as otherwise provided in subdivisions (b) through

1 (e), receipts shall be proportioned based on the ratio of revenue
2 miles of the person in this state to the revenue miles of the
3 person everywhere.

4 (b) Receipts from maritime transportation services shall be
5 attributable to this state as follows:

6 (i) 50% of those receipts that either originate or terminate in
7 this state.

8 (ii) 100% of those receipts that both originate and terminate
9 in this state.

10 (c) Receipts attributable to this state of a person whose
11 business activity consists of the transportation both of property
12 and of individuals shall be proportioned based on the total
13 receipts for passenger miles and ton mile fractions, separately
14 computed and individually weighted by the ratio of receipts from
15 passenger transportation to total receipts from all transportation,
16 and by the ratio of receipts from freight transportation to total
17 receipts from all transportation, respectively.

18 (d) Receipts attributable to this state of a person whose
19 business activity consists of the transportation of oil by pipeline
20 shall be proportioned based on the ratio of the receipts for the
21 barrel miles transported in this state to the receipts for the
22 barrel miles transported by the person everywhere.

23 (e) Receipts attributable to this state of a person whose
24 business activities consist of the transportation of gas by
25 pipeline shall be proportioned based on the ratio of the receipts
26 for the 1,000 cubic feet miles transported in this state to the
27 receipts for the 1,000 cubic feet miles transported by the person

1 everywhere.

2 (12) For purposes of subsection (11), if a taxpayer can show
3 that revenue mile information is not available or cannot be
4 obtained without unreasonable expense to the taxpayer, receipts
5 attributable to this state shall be that portion of the revenue
6 derived from transportation services performed everywhere that the
7 miles of transportation services performed in this state bear to
8 the miles of transportation services performed everywhere. If the
9 department determines that the information required for the
10 calculations under subsection (11) are not available or cannot be
11 obtained without unreasonable expense to the taxpayer, the
12 department may use other available information that in the opinion
13 of the department will result in an equitable allocation of the
14 taxpayer's receipts to this state.

15 (13) Except as provided in subsections (14) through (19),
16 receipts from the sale of telecommunications service or mobile
17 telecommunications service are in this state if the customer's
18 place of primary use of the service is in this state. As used in
19 this subsection, "place of primary use" means the customer's
20 residential street address or primary business street address where
21 the customer's use of the telecommunications service primarily
22 occurs. For mobile telecommunications service, the customer's
23 residential street address or primary business street address is
24 the place of primary use only if it is within the licensed service
25 area of the customer's home service provider.

26 (14) Receipts from the sale of telecommunications service sold
27 on an individual call-by-call basis are in this state if either of

1 the following applies:

2 (a) The call both originates and terminates in this state.

3 (b) The call either originates or terminates in this state and
4 the service address is located in this state.

5 (15) Receipts from the sale of postpaid telecommunications
6 service are in this state if the origination point of the
7 telecommunication signal, as first identified by the service
8 provider's telecommunication system or as identified by information
9 received by the seller from its service provider if the system used
10 to transport telecommunication signals is not the seller's, is
11 located in this state.

12 (16) Receipts from the sale of prepaid telecommunications
13 service or prepaid mobile telecommunications service are in this
14 state if the purchaser obtains the prepaid card or similar means of
15 conveyance at a location in this state. Receipts from recharging a
16 prepaid telecommunications service or mobile telecommunications
17 service are in this state if the purchaser's billing information
18 indicates a location in this state.

19 (17) Receipts from the sale of private communication services
20 are in this state as follows:

21 (a) 100% of the receipts from the sale of each channel
22 termination point within this state.

23 (b) 100% of the receipts from the sale of the total channel
24 mileage between each termination point within this state.

25 (c) 50% of the receipts from the sale of service segments for
26 a channel between 2 customer channel termination points, 1 of which
27 is located in this state and the other is located outside of this

1 state, which segments are separately charged.

2 (d) The receipts from the sale of service for segments with a
3 channel termination point located in this state and in 2 or more
4 other states or equivalent jurisdictions, and which segments are
5 not separately billed, are in this state based on a percentage
6 determined by dividing the number of customer channel termination
7 points in this state by the total number of customer channel
8 termination points.

9 (18) Receipts from the sale of billing services and ancillary
10 services for telecommunications service are in this state based on
11 the location of the purchaser's customers. If the location of the
12 purchaser's customers is not known or cannot be determined, the
13 sale of billing services and ancillary services for
14 telecommunications service is in this state based on the location
15 of the purchaser.

16 (19) Receipts to access a carrier's network or from the sale
17 of telecommunications services for resale are in this state as
18 follows:

19 (a) 100% of the receipts from access fees attributable to
20 intrastate telecommunications service that both originates and
21 terminates in this state.

22 (b) 50% of the receipts from access fees attributable to
23 interstate telecommunications service if the interstate call either
24 originates or terminates in this state.

25 (c) 100% of the receipts from interstate end user access line
26 charges, if the customer's service address is in this state. As
27 used in this subdivision, "interstate end user access line charges"

1 includes, but is not limited to, the surcharge approved by the
2 federal communications commission and levied pursuant to 47 CFR 69.

3 (d) Gross receipts from sales of telecommunications services
4 to other telecommunication service providers for resale shall be
5 sourced to this state using the apportionment concepts used for
6 non-resale receipts of telecommunications services if the
7 information is readily available to make that determination. If the
8 information is not readily available, then the taxpayer may use any
9 other reasonable and consistent method.

10 (20) Except as otherwise provided under this subsection, for a
11 taxpayer whose business activities include live radio or television
12 programming as described in subsector code 7922 of industry group
13 792 under the standard industrial classification code as compiled
14 by the United States department of labor or are included in
15 industry ~~groups~~**GROUP** 483, 484, 781, or 782 under the standard
16 industrial classification code as compiled by the United States
17 department of labor, or any combination of the business activities
18 included in those groups, media receipts are in this state and
19 attributable to this state only if the commercial domicile of the
20 customer is in this state and the customer has a direct connection
21 or relationship with the taxpayer pursuant to a contract under
22 which the media receipts are derived. For media receipts from the
23 sale of advertising, if the customer of that advertising is
24 commercially domiciled in this state and receives some of the
25 benefit of the sale of that advertising in this state, the media
26 receipts from the advertising to that customer are included in the
27 numerator of the apportionment factor in proportion to the extent

1 that the customer receives the benefit of the advertising in this
2 state. For purposes of this subsection, if the taxpayer is a
3 broadcaster and if the customer receives some of the benefit of the
4 advertising in this state, the media receipts for that sale of
5 advertising from that customer shall be proportioned based on the
6 ratio that the broadcaster's viewing or listening audience in this
7 state bears to its total viewing or listening audience everywhere.
8 As used in this subsection:

9 (a) "Media property" means motion pictures, television
10 programs, internet programs and websites, other audiovisual works,
11 and any other similar property embodying words, ideas, concepts,
12 images, or sound without regard to the means or methods of
13 distribution or the medium in which the property is embodied.

14 (b) "Media receipts" means receipts from the sale, license,
15 broadcast, transmission, distribution, exhibition, or other use of
16 media property and receipts from the sale of media services. Media
17 receipts do not include receipts from the sale of media property
18 that is a consumer product that is ultimately sold at retail.

19 (c) "Media services" means services in which the use of the
20 media property is integral to the performance of those services.

21 (21) Terms used in subsections (13) through (20) have the same
22 meaning as those terms defined in the streamlined sales and use tax
23 agreement administered under the streamlined sales and use tax
24 administration act, 2004 PA 174, MCL 205.801 to 205.833.

25 (22) For purposes of this section, a borrower is considered
26 located in this state if the borrower's billing address is in this
27 state.

1 Enacting section 1. This amendatory act takes effect January
2 1, 2012.