

# HOUSE BILL No. 5003

September 22, 2011, Introduced by Reps. Geiss, Goike and Lipton and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled  
"Income tax act of 1967,"  
by amending section 30 (MCL 206.30), as amended by 2011 PA 38.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 30. (1) "Taxable income" means, for a person other than a  
2 corporation, estate, or trust, adjusted gross income as defined in  
3 the internal revenue code subject to the following adjustments  
4 under this section:

5           (a) Add gross interest income and dividends derived from  
6 obligations or securities of states other than Michigan, in the  
7 same amount that has been excluded from adjusted gross income less  
8 related expenses not deducted in computing adjusted gross income  
9 because of section 265(a)(1) of the internal revenue code.

1 (b) Add taxes on or measured by income to the extent the taxes  
2 have been deducted in arriving at adjusted gross income.

3 (c) Add losses on the sale or exchange of obligations of the  
4 United States government, the income of which this state is  
5 prohibited from subjecting to a net income tax, to the extent that  
6 the loss has been deducted in arriving at adjusted gross income.

7 (d) Deduct, to the extent included in adjusted gross income,  
8 income derived from obligations, or the sale or exchange of  
9 obligations, of the United States government that this state is  
10 prohibited by law from subjecting to a net income tax, reduced by  
11 any interest on indebtedness incurred in carrying the obligations  
12 and by any expenses incurred in the production of that income to  
13 the extent that the expenses, including amortizable bond premiums,  
14 were deducted in arriving at adjusted gross income.

15 (e) Deduct, to the extent included in adjusted gross income,  
16 the following:

17 (i) Compensation, including retirement benefits, received for  
18 services in the armed forces of the United States.

19 (ii) Retirement or pension benefits under the railroad  
20 retirement act of 1974, 45 USC 231 to 231v.

21 (f) Deduct the following to the extent included in adjusted  
22 gross income subject to the limitations and restrictions set forth  
23 in ~~subsection~~ **SUBSECTIONS (9) AND (10)**:

24 (i) Retirement or pension benefits received from a federal  
25 public retirement system or from a public retirement system of or  
26 created by this state or a political subdivision of this state.

27 (ii) Retirement or pension benefits received from a public

1 retirement system of or created by another state or any of its  
2 political subdivisions if the income tax laws of the other state  
3 permit a similar deduction or exemption or a reciprocal deduction  
4 or exemption of a retirement or pension benefit received from a  
5 public retirement system of or created by this state or any of the  
6 political subdivisions of this state.

7 (iii) Social security benefits as defined in section 86 of the  
8 internal revenue code.

9 (iv) Beginning on and after January 1, 2007, retirement or  
10 pension benefits not deductible under subparagraph (i) or  
11 subdivision (e) from any other retirement or pension system or  
12 benefits from a retirement annuity policy in which payments are  
13 made for life to a senior citizen, to a maximum of \$42,240.00 for a  
14 single return and \$84,480.00 for a joint return. The maximum  
15 amounts allowed under this subparagraph shall be reduced by the  
16 amount of the deduction for retirement or pension benefits claimed  
17 under subparagraph (i) or subdivision (e) and by the amount of a  
18 deduction claimed under subdivision (p). For the 2008 tax year and  
19 each tax year after 2008, the maximum amounts allowed under this  
20 subparagraph shall be adjusted by the percentage increase in the  
21 United States consumer price index for the immediately preceding  
22 calendar year. The department shall annualize the amounts provided  
23 in this subparagraph as necessary. As used in this subparagraph,  
24 "senior citizen" means that term as defined in section 514.

25 (v) The amount determined to be the section 22 amount eligible  
26 for the elderly and the permanently and totally disabled credit  
27 provided in section 22 of the internal revenue code.

1 (g) Adjustments resulting from the application of section 271.

2 (h) Adjustments with respect to estate and trust income as  
3 provided in section 36.

4 (i) Adjustments resulting from the allocation and  
5 apportionment provisions of chapter 3.

6 (j) Deduct the following payments made by the taxpayer in the  
7 tax year:

8 (i) For the 2010 tax year and each tax year after 2010, the  
9 amount of a charitable contribution made to the advance tuition  
10 payment fund created under section 9 of the Michigan education  
11 trust act, 1986 PA 316, MCL 390.1429.

12 (ii) The amount of payment made under an advance tuition  
13 payment contract as provided in the Michigan education trust act,  
14 1986 PA 316, MCL 390.1421 to 390.1442.

15 (iii) The amount of payment made under a contract with a private  
16 sector investment manager that meets all of the following criteria:

17 (A) The contract is certified and approved by the board of  
18 directors of the Michigan education trust to provide equivalent  
19 benefits and rights to purchasers and beneficiaries as an advance  
20 tuition payment contract as described in subparagraph (ii).

21 (B) The contract applies only for a state institution of  
22 higher education as defined in the Michigan education trust act,  
23 1986 PA 316, MCL 390.1421 to 390.1442, or a community or junior  
24 college in Michigan.

25 (C) The contract provides for enrollment by the contract's  
26 qualified beneficiary in not less than 4 years after the date on  
27 which the contract is entered into.

1 (D) The contract is entered into after either of the  
2 following:

3 (I) The purchaser has had his or her offer to enter into an  
4 advance tuition payment contract rejected by the board of directors  
5 of the Michigan education trust, if the board determines that the  
6 trust cannot accept an unlimited number of enrollees upon an  
7 actuarially sound basis.

8 (II) The board of directors of the Michigan education trust  
9 determines that the trust can accept an unlimited number of  
10 enrollees upon an actuarially sound basis.

11 (k) If an advance tuition payment contract under the Michigan  
12 education trust act, 1986 PA 316, MCL 390.1421 to 390.1442, or  
13 another contract for which the payment was deductible under  
14 subdivision (j) is terminated and the qualified beneficiary under  
15 that contract does not attend a university, college, junior or  
16 community college, or other institution of higher education, add  
17 the amount of a refund received by the taxpayer as a result of that  
18 termination or the amount of the deduction taken under subdivision  
19 (j) for payment made under that contract, whichever is less.

20 (l) Deduct from the taxable income of a purchaser the amount  
21 included as income to the purchaser under the internal revenue code  
22 after the advance tuition payment contract entered into under the  
23 Michigan education trust act, 1986 PA 316, MCL 390.1421 to  
24 390.1442, is terminated because the qualified beneficiary attends  
25 an institution of postsecondary education other than either a state  
26 institution of higher education or an institution of postsecondary  
27 education located outside this state with which a state institution

1 of higher education has reciprocity.

2 (m) Add, to the extent deducted in determining adjusted gross  
3 income, the net operating loss deduction under section 172 of the  
4 internal revenue code.

5 (n) Deduct a net operating loss deduction for the taxable year  
6 as determined under section 172 of the internal revenue code  
7 subject to the modifications under section 172(b)(2) of the  
8 internal revenue code and subject to the allocation and  
9 apportionment provisions of chapter 3 of this part for the taxable  
10 year in which the loss was incurred.

11 (o) Deduct, to the extent included in adjusted gross income,  
12 benefits from a discriminatory self-insurance medical expense  
13 reimbursement plan.

14 (p) Beginning on and after January 1, 2007, subject to any  
15 limitation provided in this subdivision, a taxpayer who is a senior  
16 citizen may deduct to the extent included in adjusted gross income,  
17 interest, dividends, and capital gains received in the tax year not  
18 to exceed \$9,420.00 for a single return and \$18,840.00 for a joint  
19 return. The maximum amounts allowed under this subdivision shall be  
20 reduced by the amount of a deduction claimed for retirement  
21 benefits under subdivision (e) or a deduction claimed under  
22 subdivision (f) (i), (ii), (iv), or (v). For the 2008 tax year and each  
23 tax year after 2008, the maximum amounts allowed under this  
24 subdivision shall be adjusted by the percentage increase in the  
25 United States consumer price index for the immediately preceding  
26 calendar year. The department shall annualize the amounts provided  
27 in this subdivision as necessary. Beginning January 1, 2012, the

1 deduction under this subsection is not available to a senior  
2 citizen born after 1945. As used in this subdivision, "senior  
3 citizen" means that term as defined in section 514.

4 (q) Deduct, to the extent included in adjusted gross income,  
5 all of the following:

6 (i) The amount of a refund received in the tax year based on  
7 taxes paid under this part.

8 (ii) The amount of a refund received in the tax year based on  
9 taxes paid under the city income tax act, 1964 PA 284, MCL 141.501  
10 to 141.787.

11 (iii) The amount of a credit received in the tax year based on a  
12 claim filed under sections 520 and 522 to the extent that the taxes  
13 used to calculate the credit were not used to reduce adjusted gross  
14 income for a prior year.

15 (r) Add the amount paid by the state on behalf of the taxpayer  
16 in the tax year to repay the outstanding principal on a loan taken  
17 on which the taxpayer defaulted that was to fund an advance tuition  
18 payment contract entered into under the Michigan education trust  
19 act, 1986 PA 316, MCL 390.1421 to 390.1442, if the cost of the  
20 advance tuition payment contract was deducted under subdivision (j)  
21 and was financed with a Michigan education trust secured loan.

22 (s) Deduct, to the extent included in adjusted gross income,  
23 any amount, and any interest earned on that amount, received in the  
24 tax year by a taxpayer who is a Holocaust victim as a result of a  
25 settlement of claims against any entity or individual for any  
26 recovered asset pursuant to the German act regulating unresolved  
27 property claims, also known as Gesetz zur Regelung offener

1 Vermogensfragen, as a result of the settlement of the action  
2 entitled In re: Holocaust victim assets litigation, CV-96-4849, CV-  
3 96-5161, and CV-97-0461 (E.D. NY), or as a result of any similar  
4 action if the income and interest are not commingled in any way  
5 with and are kept separate from all other funds and assets of the  
6 taxpayer. As used in this subdivision:

7 (i) "Holocaust victim" means a person, or the heir or  
8 beneficiary of that person, who was persecuted by Nazi Germany or  
9 any Axis regime during any period from 1933 to 1945.

10 (ii) "Recovered asset" means any asset of any type and any  
11 interest earned on that asset including, but not limited to, bank  
12 deposits, insurance proceeds, or artwork owned by a Holocaust  
13 victim during the period from 1920 to 1945, withheld from that  
14 Holocaust victim from and after 1945, and not recovered, returned,  
15 or otherwise compensated to the Holocaust victim until after 1993.

16 (t) Deduct, to the extent not deducted in determining adjusted  
17 gross income, both of the following:

18 (i) Contributions made by the taxpayer in the tax year less  
19 qualified withdrawals made in the tax year from education savings  
20 accounts, calculated on a per education savings account basis,  
21 pursuant to the Michigan education savings program act, 2000 PA  
22 161, MCL 390.1471 to 390.1486, not to exceed a total deduction of  
23 \$5,000.00 for a single return or \$10,000.00 for a joint return per  
24 tax year. The amount calculated under this subparagraph for each  
25 education savings account shall not be less than zero.

26 (ii) The amount under section 30f.

27 (u) Add, to the extent not included in adjusted gross income,



1 the amount of money withdrawn by the taxpayer in the tax year from  
2 education savings accounts, not to exceed the total amount deducted  
3 under subdivision (t) in the tax year and all previous tax years,  
4 if the withdrawal was not a qualified withdrawal as provided in the  
5 Michigan education savings program act, 2000 PA 161, MCL 390.1471  
6 to 390.1486. This subdivision does not apply to withdrawals that  
7 are less than the sum of all contributions made to an education  
8 savings account in all previous tax years for which no deduction  
9 was claimed under subdivision (t), less any contributions for which  
10 no deduction was claimed under subdivision (t) that were withdrawn  
11 in all previous tax years.

12 (v) A taxpayer who is a resident tribal member may deduct, to  
13 the extent included in adjusted gross income, all nonbusiness  
14 income earned or received in the tax year and during the period in  
15 which an agreement entered into between the taxpayer's tribe and  
16 this state pursuant to section 30c of 1941 PA 122, MCL 205.30c, is  
17 in full force and effect. As used in this subdivision:

18 (i) "Business income" means business income as defined in  
19 section 4 and apportioned under chapter 3.

20 (ii) "Nonbusiness income" means nonbusiness income as defined  
21 in section 14 and, to the extent not included in business income,  
22 all of the following:

23 (A) All income derived from wages whether the wages are earned  
24 within the agreement area or outside of the agreement area.

25 (B) All interest and passive dividends.

26 (C) All rents and royalties derived from real property located  
27 within the agreement area.

1 (D) All rents and royalties derived from tangible personal  
2 property, to the extent the personal property is utilized within  
3 the agreement area.

4 (E) Capital gains from the sale or exchange of real property  
5 located within the agreement area.

6 (F) Capital gains from the sale or exchange of tangible  
7 personal property located within the agreement area at the time of  
8 sale.

9 (G) Capital gains from the sale or exchange of intangible  
10 personal property.

11 (H) All pension income and benefits including, but not limited  
12 to, distributions from a 401(k) plan, individual retirement  
13 accounts under section 408 of the internal revenue code, or a  
14 defined contribution plan, or payments from a defined benefit plan.

15 (I) All per capita payments by the tribe to resident tribal  
16 members, without regard to the source of payment.

17 (J) All gaming winnings.

18 (iii) "Resident tribal member" means an individual who meets all  
19 of the following criteria:

20 (A) Is an enrolled member of a federally recognized tribe.

21 (B) The individual's tribe has an agreement with this state  
22 pursuant to section 30c of 1941 PA 122, MCL 205.30c, that is in  
23 full force and effect.

24 (C) The individual's principal place of residence is located  
25 within the agreement area as designated in the agreement under sub-  
26 subparagraph (B).

27 (w) For tax years beginning after December 31, 2011, eliminate

1 all of the following:

2 (i) Income from producing oil and gas to the extent included in  
3 adjusted gross income.

4 (ii) Expenses of producing oil and gas to the extent deducted  
5 in arriving at adjusted gross income.

6 (2) Except as otherwise provided in subsection (7), a personal  
7 exemption of \$3,700.00 multiplied by the number of personal or  
8 dependency exemptions allowable on the taxpayer's federal income  
9 tax return pursuant to the internal revenue code shall be  
10 subtracted in the calculation that determines taxable income.

11 (3) Except as otherwise provided in subsection (7), a single  
12 additional exemption determined as follows shall be subtracted in  
13 the calculation that determines taxable income in each of the  
14 following circumstances:

15 (a) \$1,800.00 for each taxpayer and every dependent of the  
16 taxpayer who is a deaf person as defined in section 2 of the deaf  
17 persons' interpreters act, 1982 PA 204, MCL 393.502; a paraplegic,  
18 a quadriplegic, or a hemiplegic; a person who is blind as defined  
19 in section 504; or a person who is totally and permanently disabled  
20 as defined in section 522. When a dependent of a taxpayer files an  
21 annual return under this part, the taxpayer or dependent of the  
22 taxpayer, but not both, may claim the additional exemption allowed  
23 under this subdivision. As used in this subdivision, "dependent"  
24 means that term as defined in section 30e.

25 (b) For tax years beginning after 2007, \$250.00 for each  
26 taxpayer and every dependent of the taxpayer who is a qualified  
27 disabled veteran. When a dependent of a taxpayer files an annual

1 return under this part, the taxpayer or dependent of the taxpayer,  
2 but not both, may claim the additional exemption allowed under this  
3 subdivision. As used in this subdivision:

4 (i) "Qualified disabled veteran" means a veteran with a  
5 service-connected disability.

6 (ii) "Service-connected disability" means a disability incurred  
7 or aggravated in the line of duty in the active military, naval, or  
8 air service as described in 38 USC 101(16).

9 (iii) "Veteran" means a person who served in the active  
10 military, naval, marine, coast guard, or air service and who was  
11 discharged or released from his or her service with an honorable or  
12 general discharge.

13 (4) An individual with respect to whom a deduction under  
14 section 151 of the internal revenue code is allowable to another  
15 federal taxpayer during the tax year is not considered to have an  
16 allowable federal exemption for purposes of subsection (2), but may  
17 subtract \$1,500.00 in the calculation that determines taxable  
18 income for a tax year.

19 (5) A nonresident or a part-year resident is allowed that  
20 proportion of an exemption or deduction allowed under subsection  
21 (2), (3), or (4) that the taxpayer's portion of adjusted gross  
22 income from Michigan sources bears to the taxpayer's total adjusted  
23 gross income.

24 (6) In calculating taxable income, a taxpayer shall not  
25 subtract from adjusted gross income the amount of prizes won by the  
26 taxpayer under the McCauley-Traxler-Law-Bowman-McNeely lottery act,  
27 1972 PA 239, MCL 432.1 to 432.47.

1           (7) For each tax year beginning on and after January 1, 2013,  
2 the personal exemption allowed under subsection (2) shall be  
3 adjusted by multiplying the exemption for the tax year beginning in  
4 2012 by a fraction, the numerator of which is the United States  
5 consumer price index for the state fiscal year ending in the tax  
6 year prior to the tax year for which the adjustment is being made  
7 and the denominator of which is the United States consumer price  
8 index for the 2010-2011 state fiscal year. The resultant product  
9 shall be rounded to the nearest \$100.00 increment. As used in this  
10 section, "United States consumer price index" means the United  
11 States consumer price index for all urban consumers as defined and  
12 reported by the United States department of labor, bureau of labor  
13 statistics. For each tax year, the exemptions allowed under  
14 subsection (3) shall be adjusted by multiplying the exemption  
15 amount under subsection (3) for the tax year by a fraction, the  
16 numerator of which is the United States consumer price index for  
17 the state fiscal year ending the tax year prior to the tax year for  
18 which the adjustment is being made and the denominator of which is  
19 the United States consumer price index for the 1998-1999 state  
20 fiscal year. The resultant product shall be rounded to the nearest  
21 \$100.00 increment. For a taxpayer whose total household resources  
22 are \$75,000.00 or more for a single return or \$150,000.00 or more  
23 for a joint return, the personal exemption allowed under subsection  
24 (2) shall be adjusted by multiplying the exemption for the tax year  
25 for a single return by a fraction, the numerator of which is  
26 \$100,000.00 minus the taxpayer's total household resources, and the  
27 denominator of which is \$25,000.00, and for a joint return by a

1 fraction, the numerator of which is \$200,000.00 minus the  
2 taxpayer's total household resources, and the denominator of which  
3 is \$50,000.00. The personal exemption allowed under subsection (2)  
4 shall not be allowed for a single taxpayer whose total household  
5 resources exceed \$100,000.00 or for joint filers whose total  
6 household resources exceed \$200,000.00.

7 (8) As used in subsection (1)(f), "retirement or pension  
8 benefits" means distributions from all of the following:

9 (a) Except as provided in subdivision (d), qualified pension  
10 trusts and annuity plans that qualify under section 401(a) of the  
11 internal revenue code, including all of the following:

12 (i) Plans for self-employed persons, commonly known as Keogh or  
13 HR10 plans.

14 (ii) Individual retirement accounts that qualify under section  
15 408 of the internal revenue code if the distributions are not made  
16 until the participant has reached 59-1/2 years of age, except in  
17 the case of death, disability, or distributions described by  
18 section 72(t)(2)(A)(iv) of the internal revenue code.

19 (iii) Employee annuities or tax-sheltered annuities purchased  
20 under section 403(b) of the internal revenue code by organizations  
21 exempt under section 501(c)(3) of the internal revenue code, or by  
22 public school systems.

23 (iv) Distributions from a 401(k) plan attributable to employee  
24 contributions mandated by the plan or attributable to employer  
25 contributions.

26 (b) The following retirement and pension plans not qualified  
27 under the internal revenue code:

1           (i) Plans of the United States, state governments other than  
2 this state, and political subdivisions, agencies, or  
3 instrumentalities of this state.

4           (ii) Plans maintained by a church or a convention or  
5 association of churches.

6           (iii) All other unqualified pension plans that prescribe  
7 eligibility for retirement and predetermine contributions and  
8 benefits if the distributions are made from a pension trust.

9           (c) Retirement or pension benefits received by a surviving  
10 spouse if those benefits qualified for a deduction prior to the  
11 decedent's death. Benefits received by a surviving child are not  
12 deductible.

13           (d) Retirement and pension benefits do not include:

14           (i) Amounts received from a plan that allows the employee to  
15 set the amount of compensation to be deferred and does not  
16 prescribe retirement age or years of service. These plans include,  
17 but are not limited to, all of the following:

18           (A) Deferred compensation plans under section 457 of the  
19 internal revenue code.

20           (B) Distributions from plans under section 401(k) of the  
21 internal revenue code other than plans described in subdivision  
22 (a) (iv) .

23           (C) Distributions from plans under section 403(b) of the  
24 internal revenue code other than plans described in subdivision  
25 (a) (iii) .

26           (ii) Premature distributions paid on separation, withdrawal, or  
27 discontinuance of a plan prior to the earliest date the recipient

1 could have retired under the provisions of the plan.

2 (iii) Payments received as an incentive to retire early unless  
3 the distributions are from a pension trust.

4 (9) In determining taxable income under this section, **EXCEPT**  
5 **AS OTHERWISE PROVIDED UNDER SUBSECTION (10)**, the following  
6 limitations and restrictions apply:

7 (a) For a person born before 1946, this subsection provides no  
8 additional restrictions or limitations under subsection (1)(f).

9 (b) For a person born in 1946 through 1952, the sum of the  
10 deductions under subsection (1)(f)(i), (ii), and (iv) is limited to  
11 \$20,000.00 for a single return and \$40,000.00 for a joint return.  
12 After that person reaches the age of 67, the deductions under  
13 subsection (1)(f)(i), (ii), and (iv) do not apply and that person is  
14 eligible for a deduction of \$20,000.00 for a single return and  
15 \$40,000.00 for a joint return, which deduction is available against  
16 all types of income and is not restricted to income from retirement  
17 or pension benefits. However if that person's total household  
18 resources exceed \$75,000.00 for a single return or \$150,000.00 for  
19 a joint return, that person is not eligible for a deduction of  
20 \$20,000.00 for a single return and \$40,000.00 for a joint return. A  
21 person that takes the deduction under subsection (1)(e) is not  
22 eligible for the unrestricted deduction of \$20,000.00 for a single  
23 return and \$40,000.00 for a joint return under this subdivision.

24 (c) For a person born after 1952, the deduction under  
25 subsection (1)(f)(i), (ii), or (iv) does not apply. When that person  
26 reaches the age of 67, that person is eligible for a deduction of  
27 \$20,000.00 for a single return and \$40,000.00 for a joint return,



1 which deduction is available against all types of income and is not  
2 restricted to income from retirement or pension benefits. If a  
3 person takes the deduction of \$20,000.00 for a single return and  
4 \$40,000.00 for a joint return, that person shall not take the  
5 deduction under subsection (1)(f)(iii) and shall not take the  
6 personal exemption under subsection (2). That person may elect not  
7 to take the deduction of \$20,000.00 for a single return and  
8 \$40,000.00 for a joint return and elect to take the deduction under  
9 subsection (1)(f)(iii) and the personal exemption under subsection  
10 (2) if that election would reduce that person's tax liability.  
11 However, if that person's total household resources exceed  
12 \$75,000.00 for a single return or \$150,000.00 for a joint return,  
13 that person is not eligible for a deduction of \$20,000.00 for a  
14 single return and \$40,000.00 for a joint return. A person that  
15 takes the deduction under subsection (1)(e) is not eligible for the  
16 unrestricted deduction of \$20,000.00 for a single return and  
17 \$40,000.00 for a joint return under this subdivision.

18 (d) For a joint return, the limitations and restrictions in  
19 this subsection shall be applied based on the age of the older  
20 spouse filing the joint return.

21 **(10) IF AN APPELLATE COURT RULES THAT REDUCING OR ELIMINATING**  
22 **THE TAX EXEMPTION FOR PUBLIC-PENSION INCOMES AS PROVIDED IN THIS**  
23 **SECTION AS AMENDED BY 2011 PA 38 IS UNCONSTITUTIONAL, THEN A PERSON**  
24 **IS ELIGIBLE FOR AN UNRESTRICTED DEDUCTION OF ANY OTHER RETIREMENT**  
25 **OR PENSION BENEFITS DESCRIBED UNDER SUBSECTION (1)(F)(iv) .**

26 (11) ~~(10)~~—As used in this section:

27 (a) "Oil and gas" means oil and gas that is subject to

1 severance tax under 1929 PA 48, MCL 205.301 to 205.317.

2 (b) "Total household resources" means that term as defined in  
3 chapter 9.