

# HOUSE BILL No. 5010

September 26, 2013, Introduced by Rep. Cotter and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled  
"Income tax act of 1967,"  
by amending sections 625 and 663 (MCL 206.625 and 206.663), section  
625 as amended by 2011 PA 175 and section 663 as amended by 2011 PA  
308.

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

1           Sec. 625. (1) Except as otherwise provided in this section,  
2 the following are exempt from the tax imposed by this part:

3           (a) The United States, this state, other states, and the  
4 agencies, political subdivisions, and enterprises of the United  
5 States, this state, and other states.

6           (b) A person who is exempt from federal income tax under the  
7 internal revenue code except the following:

1 (i) An organization included under section 501(c)(12) or  
2 501(c)(16) of the internal revenue code.

3 (ii) An organization exempt under section 501(c)(4) of the  
4 internal revenue code that would be exempt under section 501(c)(12)  
5 of the internal revenue code except that it failed to meet the  
6 requirements in section 501(c)(12) that 85% or more of its income  
7 consist of amounts collected from members.

8 (iii) The tax base attributable to unrelated business activities  
9 giving rise to the unrelated business taxable income of an exempt  
10 person.

11 (c) A foreign person that is domiciled in a member country of  
12 the North American free trade agreement is not subject to taxation  
13 under this part if the foreign person is domiciled in a subnational  
14 jurisdiction that does not impose an income tax on a similarly  
15 situated person domiciled in this state whose presence in the  
16 foreign country is the same as the foreign person's presence in the  
17 United States. If a qualifying foreign person is domiciled in a  
18 subnational jurisdiction that does not impose an income tax on  
19 businesses, but instead imposes some other type of subnational  
20 business tax, that foreign person is not subject to taxation under  
21 this part if that subnational business tax is not imposed on a  
22 similarly situated person domiciled in this state whose presence in  
23 the foreign country is the same as the foreign person's presence in  
24 the United States.

25 **(D) A PERSON THAT QUALIFIES AS A DOMESTIC INTERNATIONAL SALES**  
26 **CORPORATION AS DEFINED IN SECTION 992 OF THE INTERNAL REVENUE CODE**  
27 **FOR THE PORTION OF THE YEAR THAT IT HAS IN EFFECT A VALID ELECTION**

1 **TO BE TREATED AS A DOMESTIC INTERNATIONAL SALES CORPORATION.**

2 (2) Notwithstanding any other provision of this part to the  
3 contrary, a foreign person subject to tax under this part shall  
4 calculate its corporate income tax base under this section. Except  
5 as otherwise provided in this section, the corporate income tax  
6 base of a foreign person is subject to all adjustments and other  
7 provisions of this part. However, the corporate income tax base  
8 shall not include net income from sales of tangible personal  
9 property where title passes outside the United States.

10 (3) Except as otherwise provided in this section, the  
11 corporate income tax base of a foreign person includes the sum of  
12 business income and the adjustments under section 623 that are  
13 related to United States business activity.

14 (4) The sales factor for a foreign person is a fraction, the  
15 numerator of which is the taxpayer's total sales in this state  
16 during the tax year and the denominator of which is the taxpayer's  
17 total sales in the United States during the tax year. For purposes  
18 of this subsection, for sales of tangible personal property, only  
19 those sales where title passes inside the United States shall be  
20 used in the sales factor, and for sales of property other than  
21 tangible personal property, those sales shall be apportioned in  
22 accordance with chapter 14.

23 (5) As used in this section:

24 (a) "Business income" means, for a foreign person, gross  
25 income attributable to the taxpayer's United States business  
26 activity and gross income derived from sources within the United  
27 States minus the deductions allowed under the internal revenue code

1 that are related to that gross income. Gross income includes the  
2 proceeds from sales shipped or delivered to any purchaser within  
3 the United States and for which title transfers within the United  
4 States; proceeds from services performed within the United States;  
5 and a pro rata proportion of the proceeds from services performed  
6 both within and outside the United States to the extent the  
7 recipient receives benefit of the services within the United  
8 States.

9 (b) "Domiciled" means the location of the headquarters of the  
10 trade or business from which the trade or business of the foreign  
11 person is principally managed and directed.

12 (c) "Foreign person" means a person formed under the laws of a  
13 foreign country or a political subdivision of a foreign country,  
14 whether or not the person is subject to taxation under the internal  
15 revenue code.

16 Sec. 663. (1) Except as otherwise provided in subsection (2)  
17 and section 669, the sales factor is a fraction, the numerator of  
18 which is the total sales of the taxpayer in this state during the  
19 tax year and the denominator of which is the total sales of the  
20 taxpayer everywhere during the tax year. The numerator of a  
21 taxpayer shall include its proportionate share of the total sales  
22 in this state of a flow-through entity that is unitary with the  
23 taxpayer. The denominator of a taxpayer shall include its  
24 proportionate share of the total sales everywhere of a flow-through  
25 entity that is unitary with the taxpayer. A flow-through entity is  
26 unitary with a taxpayer when that taxpayer owns or controls,  
27 directly or indirectly, more than 50% of the ownership interests

1 with voting rights or ownership interests that confer comparable  
2 rights to voting rights of the flow-through entity, and that has  
3 business activities or operations which result in a flow of value  
4 between the taxpayer and the flow-through entity, or between the  
5 flow-through entity and another flow-through entity unitary with  
6 the taxpayer, or has business activities or operations that are  
7 integrated with, are dependent upon, or contribute to each other.

8 (2) Except as otherwise provided under this subsection, for a  
9 taxpayer that is a unitary business group, sales include sales in  
10 this state of every person included in the unitary business group  
11 without regard to whether the person has nexus in this state. Sales  
12 between persons included in a unitary business group must be  
13 eliminated in calculating the sales factor. Sales between a  
14 taxpayer and ~~A flow-through entities~~ **ENTITY** unitary with that  
15 taxpayer ~~, or between flow through entities unitary with a~~  
16 ~~taxpayer, must~~ **SHALL, TO THE EXTENT OF THE TAXPAYER'S INTEREST IN**  
17 **THE FLOW-THROUGH ENTITY,** be eliminated in calculating the sales  
18 factor. **SALES BETWEEN A FLOW-THROUGH ENTITY UNITARY WITH A TAXPAYER**  
19 **AND ANOTHER FLOW-THROUGH ENTITY UNITARY WITH THAT SAME TAXPAYER**  
20 **SHALL, TO THE EXTENT OF THE TAXPAYER'S INTEREST IN THE SELLING**  
21 **FLOW-THROUGH ENTITY, BE ELIMINATED IN CALCULATING THE SALES FACTOR.**

22 (3) It is the intent of the legislature that the tax base of a  
23 taxpayer is apportioned to this state by multiplying the tax base  
24 by the sales factor multiplied by 100% and that apportionment shall  
25 not be based on property, payroll, or any other factor  
26 notwithstanding section 1 of 1969 PA 343, MCL 205.581.