

# HOUSE BILL No. 6104

May 4, 2010, Introduced by Reps. McMillin, Amash, Genetski, Agema, DeShazor, Haveman, Paul Scott, Calley, Green, Meekhof, Meltzer, Walsh, Daley, Bolger, Crawford, Lund, Rogers, Kowall and Booher 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 2009 PA 135.

**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~~ **FOLLOWING RATES IN THE FOLLOWING CIRCUMSTANCES:**

7           **(A) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2007 AND**  
8 **BEFORE JANUARY 1, 2011, 4.95%.**

9           **(B) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2010, 4.50%.**

10          (2) The business income tax base means a taxpayer's business

1 income subject to the following adjustments, before allocation or  
2 apportionment, and the adjustments in subsections (5), (6), and (7)  
3 after allocation or apportionment:

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

10 (b) Add all taxes on or measured by net income and the tax  
11 imposed under this act to the extent the taxes were deducted in  
12 arriving at federal taxable income.

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

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

20 (e) To the extent included in federal taxable income, add the  
21 loss or subtract the income from the business income tax base that  
22 is attributable to another entity whose business activities are  
23 taxable under this section or would be subject to the tax under  
24 this section if the business activities were in this state.

25 (f) Except as otherwise provided under this subdivision, to  
26 the extent deducted in arriving at federal taxable income, add any  
27 royalty, interest, or other expense paid to a person related to the

1 taxpayer by ownership or control for the use of an intangible asset  
2 if the person is not included in the taxpayer's unitary business  
3 group. The addition of any royalty, interest, or other expense  
4 described under this subdivision is not required to be added if the  
5 taxpayer can demonstrate that the transaction has a nontax business  
6 purpose other than avoidance of this tax, is conducted with arm's-  
7 length pricing and rates and terms as applied in accordance with  
8 sections 482 and 1274(d) of the internal revenue code, and  
9 satisfies 1 of the following:

10 (i) Is a pass through of another transaction between a third  
11 party and the related person with comparable rates and terms.

12 (ii) Results in double taxation. For purposes of this  
13 subparagraph, double taxation exists if the transaction is subject  
14 to tax in another jurisdiction.

15 (iii) Is unreasonable as determined by the treasurer, and the  
16 taxpayer agrees that the addition would be unreasonable based on  
17 the taxpayer's facts and circumstances.

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

21 (g) To the extent included in federal taxable income, deduct  
22 interest income derived from United States obligations.

23 (h) To the extent included in federal taxable income, deduct  
24 any earnings that are net earnings from self-employment as defined  
25 under section 1402 of the internal revenue code of the taxpayer or  
26 a partner or limited liability company member of the taxpayer  
27 except to the extent that those net earnings represent a reasonable

1 return on capital.

2 (i) Subject to the limitation provided under this subdivision,  
3 if the book-tax differences for the first fiscal period ending  
4 after July 12, 2007 result in a deferred liability for a person  
5 subject to tax under this act, deduct the following percentages of  
6 the total book-tax difference for each qualifying asset, for each  
7 of the successive 15 tax years beginning with the 2015 tax year:

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

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

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

11 (j) For tax years that begin after December 31, 2009, to the  
12 extent included in federal taxable income, deduct the amount of a  
13 charitable contribution made to the advance tuition payment fund  
14 created under section 9 of the Michigan education trust act, 1986  
15 PA 316, MCL 390.1429.

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

1 under this section and once in the calculation of the deduction  
2 arising from the taxpayer's modified gross receipts tax base under  
3 section 203. The adjustment under subsection (2)(i) shall be  
4 calculated without regard to the federal effect of the deduction.  
5 If the adjustment under subsection (2)(i) is greater than the  
6 taxpayer's business income tax base, any adjustment that is unused  
7 may be carried forward and applied as an adjustment to the  
8 taxpayer's business income tax base before apportionment in future  
9 years. In order to claim this deduction, the department may require  
10 the taxpayer to report the amount of this deduction on a form as  
11 prescribed by the department that is to be filed on or after the  
12 date that the first quarterly return and estimated payment are due  
13 under this act. As used in subsection (2)(i) and this subsection:

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

19 (b) "Qualifying asset" means any asset shown on the person's  
20 books and records for the first fiscal period ending after July 12,  
21 2007, in accordance with generally accepted accounting principles.

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

1 persons included in the unitary business group.

2 (5) Deduct any available business loss incurred after December  
3 31, 2007. As used in this subsection, "business loss" means a  
4 negative business income taxable amount after allocation or  
5 apportionment. The business loss shall be carried forward to the  
6 year immediately succeeding the loss year as an offset to the  
7 allocated or apportioned business income tax base, then  
8 successively to the next 9 taxable years following the loss year or  
9 until the loss is used up, whichever occurs first, but for not more  
10 than 10 taxable years after the loss year.

11 (6) Deduct any gain from the sale of any residential rental  
12 units in this state to a qualified affordable housing project that  
13 enters an agreement to operate the residential rental units as rent  
14 restricted units for a minimum of 15 years. If the qualified  
15 affordable housing project does not agree to operate all of the  
16 residential rental units as rent restricted units, the deduction  
17 under this subsection is limited to an amount equal to the gain  
18 from the sale multiplied by a fraction, the numerator of which is  
19 the number of those residential rental units purchased that are to  
20 be operated as a rent restricted unit and the denominator is the  
21 number of all residential rental units purchased. In order to claim  
22 this deduction, the department may require the taxpayer and the  
23 qualified affordable housing project to report the amount of this  
24 deduction on a form as prescribed by the department that is to be  
25 signed by both the taxpayer and the qualified affordable housing  
26 project and filed with the taxpayer's annual return. The department  
27 shall record a lien against the property subject to the operation

1 agreement for the total amount of the deduction allowed under this  
2 subsection. The department shall notify the qualified affordable  
3 housing project of the maximum amount of the lien that the  
4 qualified affordable housing project may be liable for if the  
5 qualified affordable housing project fails to qualify and operate  
6 as provided in the operation agreement within 15 years after the  
7 purchase. The lien shall become payable in an amount as provided  
8 under this subsection to the state by the qualified affordable  
9 housing project if the qualified affordable housing project fails  
10 to qualify as a qualified affordable housing project and fails to  
11 operate all or some of the residential rental units as rent  
12 restricted units in accordance with the operation agreement entered  
13 upon the purchase of those units within 15 years after the  
14 deduction is claimed by a taxpayer under this subsection. An amount  
15 equal to the product of 100% of the amount of the deduction allowed  
16 under this subsection multiplied by a fraction, the numerator of  
17 which is the difference between 15 and the number of years the  
18 affordable housing project qualified and operated rent restricted  
19 units in accordance with the agreement and the denominator is 15,  
20 shall be added back to the tax liability of the qualified  
21 affordable housing project for the tax year that the qualified  
22 affordable housing project fails to comply with the agreement.

23 (7) Subject to the limitations provided in this subsection,  
24 for a person that is a qualified affordable housing project, deduct  
25 an amount equal to the product of that person's taxable income that  
26 is attributable to residential rental units in this state owned by  
27 the qualified affordable housing project multiplied by a fraction,

1 the numerator of which is the number of rent restricted units in  
2 this state owned by that qualified affordable housing project and  
3 the denominator of which is the number of all residential rental  
4 units in this state owned by the qualified affordable housing  
5 project. The amount of the deduction calculated under this  
6 subsection shall be reduced by the amount of limited dividends or  
7 other distributions made to the partners, members, or shareholders  
8 of the qualified affordable housing project. Taxable income that is  
9 attributable to residential rental units does not include income  
10 received by the management, construction, or development company  
11 for completion and operation of the project and those rental units.

12 (8) If a qualified affordable housing project no longer meets  
13 the requirements of subsection (9)(b) or fails to operate those  
14 residential rental units as rent restricted units in accordance  
15 with the operation agreement and the requirements of subsection  
16 (9)(c), the taxpayer is entitled to the deductions under  
17 subsections (6) and (7) as long as the qualified affordable housing  
18 project continues to offer some of the residential rental units  
19 purchased as rent restricted units in accordance with the operation  
20 agreement.

21 (9) For purposes of subsections (6), (7), and (8) and this  
22 subsection:

23 (a) "Limited dividend housing association" means a limited  
24 dividend housing association, corporation, or cooperative organized  
25 and qualified pursuant to chapter 7 of the state housing  
26 development authority act of 1966, 1966 PA 346, MCL 125.1491 to  
27 125.1496.



1 (b) "Qualified affordable housing project" means a person that  
2 is organized, qualified, and operated as a limited dividend housing  
3 association that has a limitation on the amount of dividends or  
4 other distributions that may be distributed to its owners in any  
5 given year and has received funding, subsidies, grants, operating  
6 support, or construction or permanent funding through 1 or more of  
7 the following sources and programs:

8 (i) Mortgage or other financing provided by the Michigan state  
9 housing development authority created in section 21 of the state  
10 housing development authority act of 1966, 1966 PA 346, MCL  
11 125.1421, the United States department of housing and urban  
12 development, the United States department of agriculture for rural  
13 housing service, the Michigan interfaith housing trust fund,  
14 Michigan housing and community development fund, federal home loan  
15 bank, housing commission loan, community development financial  
16 institution, or mortgage or other funding or guaranteed by Fannie,  
17 Ginnie, federal housing association, United States department of  
18 agriculture, or federal home loan mortgage corporation.

19 (ii) A tax-exempt bond issued by a nonprofit organization,  
20 local governmental unit, or other authority.

21 (iii) A payment in lieu of tax agreement or other tax abatement.

22 (iv) Funding from the state or a local governmental unit  
23 through a HOME investments partnership program authorized under 42  
24 USC 12741 to 12756.

25 (v) A grant or other funding from a federal home loan bank's  
26 affordable housing program.

27 (vi) Financing or funding under the new markets tax credit

1 program under section 45D of the internal revenue code.

2 (vii) Financed in whole or in part under the United States  
3 department of housing and urban development's hope VI program as  
4 authorized by section 803 of the national affordable housing act,  
5 42 USC 8012.

6 (viii) Financed in whole or in part under the United States  
7 department of housing and urban development's section 202 program  
8 authorized by section 202 of the national housing act, 12 USC  
9 1701q.

10 (ix) Financing or funding under the low-income housing tax  
11 credit program under section 42 of the internal revenue code.

12 (x) Financing or other subsidies from any new programs similar  
13 to any of the above.

14 (c) "Rent restricted unit" means any residential rental unit's  
15 rental income is restricted in accordance with section 42(g)(1) of  
16 the internal revenue code as if it was a qualified low-income  
17 housing project, or receives rental assistance in the form of HUD  
18 section 8 subsidies or HUD housing assistance program subsidies, or  
19 rental assistance from the United States department of agriculture  
20 rural housing programs, or from any of the other programs described  
21 under subdivision (b).

22 Enacting section 1. This amendatory act does not take effect  
23 unless all of the following bills of the 95th Legislature are  
24 enacted into law:

25 (a) House Bill No. 5249.

26 (b) Senate Bill No. \_\_\_\_ or House Bill No. 6103(request no.  
27 05669'09).

1 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 6105 (request no.  
2 05670'09).

3 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 6106 (request no.  
4 05671'09).

5 (e) Senate Bill No. \_\_\_\_\_ or House Bill No. 6107 (request no.  
6 05672'09).

7 (f) Senate Bill No. \_\_\_\_\_ or House Bill No. 6112 (request no.  
8 05673'09).

9 (g) Senate Bill No. \_\_\_\_\_ or House Bill No. 6113 (request no.  
10 05675'09\*).

11 (h) Senate Bill No. \_\_\_\_\_ or House Bill No. 6109 (request no.  
12 05676'09).

13 (i) Senate Bill No. \_\_\_\_\_ or House Bill No. 6110 (request no.  
14 05677'09).

15 (j) Senate Bill No. \_\_\_\_\_ or House Bill No. 6116 (request no.  
16 05678'09).

17 (k) Senate Bill No. \_\_\_\_\_ or House Bill No. 6114 (request no.  
18 05679'09).

19 (l) Senate Bill No. \_\_\_\_\_ or House Bill No. 6117 (request no.  
20 05680'09).

21 (m) Senate Bill No. \_\_\_\_\_ or House Bill No. 6108 (request no.  
22 05681'09).

23 (n) Senate Bill No. \_\_\_\_\_ or House Bill No. 6119 (request no.  
24 05930'10).

25 (o) Senate Bill No. \_\_\_\_\_ or House Bill No. 6111 (request no.  
26 05931'10).

27 (p) Senate Bill No. \_\_\_\_\_ or House Bill No. 6115 (request no.

1 05932'10).

2 (q) Senate Bill No. \_\_\_\_\_ or House Bill No. 6118 (request no.

3 05933'10).