

Act No. 460
Public Acts of 2018
Approved by the Governor
December 26, 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Senator Booher

ENROLLED SENATE BILL No. 361

AN ACT to amend 1967 PA 281, entitled “An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement by lien and otherwise of taxes on or measured by net income and on certain commercial, business, and financial activities; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal acts and parts of acts,” by amending sections 651 and 655 (MCL 206.651 and 206.655), section 651 as amended by 2011 PA 171 and section 655 as added by 2011 PA 38.

The People of the State of Michigan enact:

Sec. 651. As used in this chapter:

(a) “Billing address” means the location indicated in the books and records of the financial institution on the first day of the tax year or on a later date in the tax year when the customer relationship began as the address where any notice, statement, or bill relating to a customer’s account is mailed.

(b) “Borrower is located in this state” or “credit card holder is located in this state” means a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state, or a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(c) “Commercial domicile” means the headquarters of the trade or business, that is the place from which the trade or business is principally managed and directed, or if a financial institution is organized under the laws of a foreign country, of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such financial institution’s commercial domicile shall be deemed for the purposes of this chapter to be the state of the United States or the District of Columbia from which such financial institution’s trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the financial institution’s trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the tax year.

(d) “Credit card” means a credit, travel, or entertainment card.

(e) “Credit card issuer’s reimbursement fee” means the fee a financial institution receives from a merchant’s bank because 1 of the persons to whom the financial institution has issued a credit card has charged merchandise or services to the credit card.

(f) “FFIEC” means the federal financial institutions examination council established pursuant to section 1004 of the financial institutions regulatory and interest rate control act of 1978, Public Law 95-630, 12 USC 3303.

(g) “Financial institution” means any of the following:

(i) A bank holding company, a national bank, a state chartered bank, a state chartered savings bank, a federally chartered savings association, or a federally chartered farm credit system institution.

(ii) Any entity, other than an entity subject to the tax imposed under chapter 12, who is directly or indirectly owned by an entity described in subparagraph (i) and is a member of the unitary business group.

(iii) A unitary business group of entities described in subparagraph (i) or (ii), or both.

(h) “Gross business” means the sum of the following less transactions between those entities included in a unitary business group:

(i) Fees, commissions, or other compensation for financial services.

(ii) Net gains, not less than zero, from the sale of loans and other intangibles.

(iii) Net gains, not less than zero, from trading in stocks, bonds, or other securities.

(iv) Interest charged to customers for carrying debit balances of margin accounts.

(v) Interest and dividends received.

(vi) Any other gross proceeds resulting from the operation as a financial institution.

(i) “Loan” means any extension of credit resulting from direct negotiations between the financial institution and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include properties treated as loans under section 595 of the internal revenue code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest-bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit, or other mortgage-backed or asset-backed security, and other similar items.

(j) “Loan secured by real property” means that 50% or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(k) “Merchant discount” means the fee or negotiated discount charged to a merchant by the financial institution for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the credit card holder.

(l) “Michigan obligations” means a bond, note, or other obligation issued by a governmental unit described in section 3 of the shared credit rating act, 1985 PA 227, MCL 141.1053.

(m) “Participation” means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) “Principal base of operations”, with respect to transportation property, means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the principal base of operations means the place of more or less permanent nature from which the employee regularly does any of the following:

(i) Starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer.

(ii) Communicates with his or her customers or other persons.

(iii) Performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.

(o) “Real property owned” and “tangible personal property owned” mean real and tangible personal property respectively on which the financial institution may claim depreciation for federal income tax purposes or to which the financial institution holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real and tangible personal properties do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(p) “Regular place of business” means an office at which the financial institution carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the financial institution. The financial institution shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than 1 regular place of business and 1 such regular place of business is in this state and 1 such regular place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the financial institution

where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the financial institution demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the financial institution.

(q) “Rolling stock” means railroad freight or passenger cars, locomotives, or other rail cars.

(r) “Syndication” means an extension of credit in which 2 or more persons finance the credit and each person is at risk only up to a specified percentage of the total extension of the credit or up to a specified dollar amount.

(s) “Top-tiered parent entity” means the highest level entity within the unitary business group that is required to file with a regulatory agency under the standards prescribed by the FFIEC.

(t) “Total equity capital” means that same amount reported by the financial institution or top-tiered parent entity, in the case of a unitary business group of financial institutions, and as reported for the tax year on any of the following forms or successor forms listed in this subdivision and designated by the FFIEC, that are filed with the office of the comptroller of the currency, the Federal Deposit Insurance Corporation, or the Federal Reserve System:

(i) The consolidated financial statement for holding companies, FR Y-9C.

(ii) The parent company only financial statements for small holding companies, FR Y-9SP.

(iii) To the extent that FR Y-9C or FR Y-9SP are not filed for the tax year, the consolidated reports of condition and income, call reports, FFIEC 031, 041, or 051.

(iv) A report similar in content and designated by the FFIEC.

(u) “Transportation property” means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, or trailers.

(v) “United States obligations” means all obligations of the United States exempt from taxation under 31 USC 3124(a) or exempt under the United States constitution or any federal statute, including the obligations of any instrumentality or agency of the United States that are exempt from state or local taxation under the United States constitution or any statute of the United States.

Sec. 655. (1) For a financial institution, the tax base is the total equity capital of the financial institution or the top-tiered parent entity in the case of a unitary business group of financial institutions, subject to the following deductions before allocation or apportionment:

(a) The average daily book value of United States obligations owned during the tax year by members of the unitary business group.

(b) The average daily book value of Michigan obligations owned during the tax year by members of the unitary business group.

(c) Subject to the limitation provided in this subdivision, the equity capital of a person that is subject to the tax imposed under chapter 12, not to exceed 125% of the minimum regulatory capitalization requirements of the member. For purposes of this subdivision, “equity capital” means equity capital as calculated in accordance with generally accepted accounting principles.

(2) For tax years beginning on or before December 31, 2020, the tax base shall be determined by adding the financial institution’s equity capital as of the close of the current tax year and preceding 4 tax years and dividing the resulting sum by 5. If a financial institution has not been in existence for a period of 5 tax years, equity capital shall be determined by adding together the financial institution’s equity capital for the number of tax years the financial institution has been in existence and dividing the resulting sum by the number of years the financial institution has been in existence. For tax years beginning after December 31, 2020, the tax base shall be determined as of the close of the tax year. For purposes of this section, a partial year shall be treated as a full year.

(3) For purposes of this section, each of the following applies:

(a) A change in identity, form, or place of organization of 1 financial institution shall be treated as if a single financial institution had been in existence for the entire tax year in which the change occurred and each tax year after the change.

(b) The combination of 2 or more financial institutions into 1 shall be treated as if the constituent financial institutions had been a single financial institution in existence for the entire tax year in which the combination occurred and each tax year after the combination, and the book values and adjustments for United States obligations and Michigan obligations of the constituent institutions shall be combined. A combination shall include any acquisition required to be accounted for by the surviving financial institution in accordance with generally accepted accounting principles or a statutory merger or consolidation.

(c) If a United States person included in a unitary business group of financial institutions or a financial institution combined return is subject to tax under chapter 11 or 12, any business income or equity capital attributable to that person shall be eliminated from the total equity capital of the unitary business group and any sales or gross business attributable to that person shall be eliminated from the apportionment formula under this chapter.

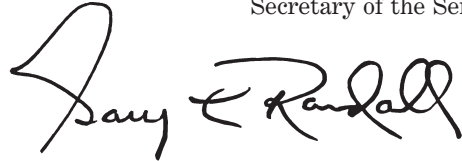
Enacting section 1. (1) This amendatory act is effective for tax years beginning after December 31, 2018.

(2) The provisions of section 655 of the income tax act of 1967, 1967 PA 281, MCL 206.655, as amended by this amendatory act, are curative and intended to clarify existing law and accurately reflect the interpretation and application of those provisions in accordance with the notice to taxpayers dated November 21, 2016, regarding 5-year averaging calculation of net equity capital for financial institutions.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

Governor