

Act No. 158
Public Acts of 2016
Approved by the Governor
June 8, 2016
Filed with the Secretary of State
June 9, 2016
EFFECTIVE DATE: July 1, 2016

**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Rep. Farrington

ENROLLED HOUSE BILL No. 5131

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 22, 26, 703, and 711 (MCL 206.22, 206.26, 206.703, and 206.711), section 22 as amended by 2003 PA 51, section 26 as amended by 2011 PA 38, section 703 as amended by 2014 PA 295, and section 711 as amended by 2011 PA 193.

The People of the State of Michigan enact:

Sec. 22. (1) “Tax” includes interest and penalties and further includes the tax required to be withheld on income under part 3, unless the intention to give it a more limited meaning is disclosed by the context.

(2) “Taxable value” means taxable value as calculated under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

Sec. 26. “Taxpayer” means any person subject to the taxes imposed by this part or subject to the withholding requirements under part 3.

Sec. 703. (1) A person who disburses pension or annuity payments, except as otherwise provided under this section, shall withhold a tax in an amount computed by applying the rate prescribed in section 51 on the taxable part of payments from an employer pension, annuity, profit-sharing, stock bonus, or other deferred compensation plan as well as from an individual retirement arrangement, an annuity, an endowment, or a life insurance contract issued by a life insurance company. Withholding shall be calculated on the taxable disbursement after deducting from the taxable portion the same proportion of the total amount of personal and dependency exemptions of the individual allowed under this act. Withholding is not required on any part of a distribution that is not expected to be includable in the recipient’s gross income or that is deductible from adjusted gross income under section 30(1)(e) or (f).

(2) Every employer in this state required under the provisions of the internal revenue code to withhold a tax on the compensation of an individual, except as otherwise provided, shall deduct and withhold a tax in an amount computed by applying, except as provided by subsection (14), the rate prescribed in section 51 to the remainder of the compensation after deducting from compensation the same proportion of the total amount of personal and dependency exemptions of the individual allowed under this act that the period of time covered by the compensation is of 1 year. The department may prescribe withholding tables that may be used by employers to compute the amount of tax required to be withheld.

(3) Except as otherwise provided under this section, for tax years that begin before July 1, 2016, every flow-through entity in this state shall withhold a tax in an amount computed by applying the rate prescribed in section 51 to the distributive share of taxable income reasonably expected to accrue after allocation and apportionment under chapter 3 of each nonresident member who is an individual after deducting from that distributive income the same proportion of the total amount of personal and dependency exemptions of the individual allowed under this act. All of the taxes withheld under this section shall accrue to the state on April 15, July 15, and October 15 of the flow-through entity's tax year and January 15 of the following year, except a flow-through entity that is not on a calendar year basis shall substitute the appropriate due dates in the flow-through entity's fiscal year that correspond to those in a calendar year. Withholding for each period shall be equal to 1/4 of the total withholding calculated on the distributive share that is reasonably expected to accrue during the tax year of the flow-through entity.

(4) Except as otherwise provided under this section, for tax years that begin before July 1, 2016, every flow-through entity with business activity in this state that has more than \$200,000.00 of business income reasonably expected to accrue in the tax year after allocation or apportionment shall withhold a tax in an amount computed by applying the rate prescribed in section 623 to the distributive share of the business income of each member that is a corporation or that is a flow-through entity. For purposes of calculating the \$200,000.00 withholding threshold, the business income of a flow-through entity shall be apportioned to this state by multiplying the business income by the sales factor of the flow-through entity. The sales factor of the flow-through entity is a fraction, the numerator of which is the total sales of the flow-through entity in this state during the tax year and the denominator of which is the total sales of the flow-through entity everywhere during the tax year. As used in this subsection, "business income" means that term as defined in section 603(2). For a partnership or S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the members. As used in this subsection, "sales" means that term as defined in section 609 and sales in this state is determined as provided in sections 665 and 669. All of the taxes withheld under this section shall accrue to the state on April 15, July 15, and October 15 of the flow-through entity's tax year and January 15 of the following year, except a flow-through entity that is not on a calendar year basis shall substitute the appropriate due dates in the flow-through entity's fiscal year that correspond to those in a calendar year. Withholding for each period shall be equal to 1/4 of the total withholding calculated on the distributive share of business income that is reasonably expected to accrue during the tax year of the flow-through entity.

(5) For tax years that begin before July 1, 2016, if a flow-through entity is subject to the withholding requirements of subsection (4), then a member of that flow-through entity that is itself a flow-through entity shall withhold a tax on the distributive share of business income as described in subsection (4) of each of its members. The department shall apply tax withheld by a flow-through entity on the distributive share of business income of a member flow-through entity to the withholding required of that member flow-through entity. All of the taxes withheld under this section shall accrue to the state on April 15, July 15, and October 15 of the flow-through entity's tax year and January 15 of the following year, except a flow-through entity that is not on a calendar year basis shall substitute the appropriate due dates in the flow-through entity's fiscal year that correspond to those in a calendar year. Withholding for each period shall be equal to 1/4 of the total withholding calculated on the distributive share of business income that is reasonably expected to accrue during the tax year of the flow-through entity.

(6) Every casino licensee shall withhold a tax in an amount computed by applying the rate prescribed in section 51 to the winnings of a nonresident reportable by the casino licensee under the internal revenue code.

(7) Every race meeting licensee or track licensee shall withhold a tax in an amount computed by applying the rate prescribed in section 51 to a payoff price on a winning ticket of a nonresident reportable by the race meeting licensee or track licensee under the internal revenue code that is the result of pari-mutuel wagering at a licensed race meeting.

(8) Every casino licensee or race meeting licensee or track licensee shall report winnings of a resident reportable by the casino licensee or race meeting licensee or track licensee under the internal revenue code to the department in the same manner and format as required under the internal revenue code.

(9) Every eligible production company shall, to the extent not withheld by a professional services corporation or professional employer organization, deduct and withhold a tax in an amount computed by applying the rate prescribed in section 51 to the remainder of the payments made to the professional services corporation or professional employer organization for the services of a performing artist or crew member after deducting from those payments the same proportion of the total amount of personal and dependency exemptions of the individuals allowed under this act.

(10) Every publicly traded partnership that has equity securities registered with the securities and exchange commission under section 12 of title I of the securities and exchange act of 1934, 15 USC 78l, shall not be subject to withholding.

(11) Except as otherwise provided under this subsection, all of the taxes withheld under this section shall accrue to the state on the last day of the month in which the taxes are withheld but shall be returned and paid to the department by the employer, eligible production company, casino licensee, or race meeting licensee or track licensee within 15 days after the end of any month or as provided in section 705. For an employer that has entered into an agreement with a community college pursuant to chapter 13 of the community college act of 1966, 1966 PA 331, MCL 389.161 to 389.166,

a portion of the taxes withheld under this section that are attributable to each employee in a new job created pursuant to the agreement shall accrue to the community college on the last day of the month in which the taxes are withheld but shall be returned and paid to the community college by the employer within 15 days after the end of any month or as provided in section 705 for as long as the agreement remains in effect. For purposes of this act and 1941 PA 122, MCL 205.1 to 205.31, payments made by an employer to a community college under this subsection shall be considered income taxes paid to this state.

(12) A person required by this section to deduct and withhold taxes on income under this section holds the amount of tax withheld as a trustee for this state and is liable for the payment of the tax to this state or, if applicable, to the community college and is not liable to any individual for the amount of the payment.

(13) An employer in this state is not required to deduct and withhold a tax on the compensation paid to a nonresident individual employee, who, under section 256, may claim a tax credit equal to or in excess of the tax estimated to be due for the tax year or is exempted from liability for the tax imposed by this act. In each tax year, the nonresident individual shall furnish to the employer, on a form approved by the department, a verified statement of nonresidence.

(14) A person required to withhold a tax under this act, by the fifteenth day of the following month, shall provide the department with a copy of any exemption certificate on which a person with income subject to withholding under subsection (6) or (7) claims more than 9 personal or dependency exemptions, claims a status that exempts the person subject to withholding under subsection (6) or (7) from withholding under this section.

(15) A person who disburses annuity payments pursuant to the terms of a qualified charitable gift annuity is not required to deduct and withhold a tax on those payments as prescribed under subsection (1). As used in this subsection, "qualified charitable gift annuity" means an annuity described under section 501(m)(5) of the internal revenue code and issued by an organization exempt under section 501(c)(3) of the internal revenue code.

(16) Notwithstanding the requirements of subsections (4) and (5), if a flow-through entity receives an exemption certificate from a member other than a nonresident individual, the flow-through entity shall not withhold a tax on the distributive share of the business income of that member if all of the following conditions are met:

(a) The exemption certificate is completed by the member in the form and manner prescribed by the department and certifies that the member will do all of the following:

(i) File the returns required under this act.

(ii) Pay or withhold the tax required under this act on the distributive share of the business income received from any flow-through entity in which the member has an ownership or beneficial interest, directly or indirectly through 1 or more other flow-through entities.

(iii) Submit to the taxing jurisdiction of this state for purposes of collection of the tax under this act together with related interest and penalties under 1941 PA 122, MCL 205.1 to 205.31, imposed on the member with respect to the distributive share of the business income of that member.

(b) The department may require the member to file the exemption certificate with the department and provide a copy to the flow-through entity.

(c) The department may require a flow-through entity that receives an exemption certificate to attach a copy of the exemption certificate to the annual reconciliation return as required by section 711. A flow-through entity that is entirely exempt from the withholding requirements of subsection (4) or (5) by this subsection may be required to furnish a copy of the exemption certificate in another manner prescribed by the department.

(d) A copy of the exemption certificate shall be retained by the member and flow-through entity and made available to the department upon request. Any copy of the exemption certificate shall be maintained in a format and for the period required by 1941 PA 122, MCL 205.1 to 205.31.

(17) The department may revoke the election provided for in subsection (16) if it determines that the member or a flow-through entity is not abiding by the terms of the exemption certificate or the requirements of subsection (16). If the department does revoke the election option under subsection (16), the department shall notify the affected flow-through entity that withholding is required on the member under subsection (4) or (5), beginning 60 days after notice of revocation is received.

(18) Notwithstanding the requirements of subsections (4) and (5), a flow-through entity is not required to withhold in accordance with this section for a member that voluntarily elects to file a return and pay the tax imposed by the Michigan business tax act under section 680 or section 500 of the Michigan business tax act, 2007 PA 36, MCL 208.1500.

(19) Notwithstanding the withholding requirements of subsection (3), (4), or (5), a flow-through entity is not required to comply with those withholding requirements to the extent that the withholding would violate any of the following:

(a) Housing assistance payment programs distribution restrictions under 24 CFR part 880, 881, 883, or 891.

(b) Rural housing service return on investment restrictions under 7 CFR 3560.68 or 3560.305.

(c) Articles of incorporation or other document of organization adopted pursuant to section 83 or 93 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1483 and 125.1493.

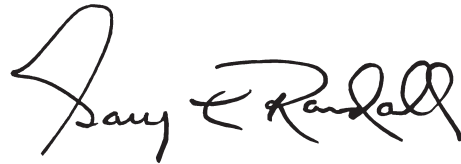
Sec. 711. (1) Every person required by this part to deduct and withhold taxes for a tax year on income other than distributive share of income from a flow-through entity shall furnish to the person who received the income a statement in duplicate on or before January 31 of the succeeding year of the total income paid during the tax year and the amount deducted or withheld. However, if employment is terminated before the close of a calendar year by a person that goes out of business or permanently ceases to exist, then the statement required by this subsection shall be issued within 30 days after the last compensation, winnings, or payoff of a winning ticket is paid. A duplicate of a statement made pursuant to this section and an annual reconciliation return, MI-W3, shall be filed with the department by February 28 of the succeeding year except that a person that goes out of business or permanently ceases to exist shall file the statement and the annual reconciliation return within 30 days after going out of business or permanently ceasing to exist. For tax years that begin before July 1, 2016, a flow-through entity that was required to withhold taxes on distributive shares of business income shall file an annual reconciliation return with the department no later than the last day of the second month following the end of the flow-through entity's federal tax year. The department may require a flow-through entity to file an annual business income information return with the department on the due date, including extensions, of its annual federal information return.

(2) Every person required by this part to deduct or withhold taxes shall make a return or report in form and content and at times as prescribed by the department. An employer that has entered into an agreement with a community college pursuant to chapter 13 of the community college act of 1966, 1966 PA 331, MCL 389.161 to 389.166, and is required to deduct or withhold taxes from compensation and make payments to a community college pursuant to the agreement for a portion of those taxes withheld shall, for as long as the agreement remains in effect, delineate in the return or report required under this subsection between the amount deducted or withheld and paid to the state and that amount paid to a community college.

(3) Every person who receives income subject to withholding under this part shall furnish to the person required by this part to deduct and withhold taxes information required to make an accurate withholding. A person who receives income subject to withholding under this part shall file with the person required by this part to deduct and withhold taxes revised information within 10 days after a decrease in the number of exemptions or a change in status from a nonresident to a resident. The person who receives income subject to withholding under this part may file revised information when the number of exemptions increases or when a change in status occurs from that of a resident of this state to a nonresident of this state. Revised information shall not be given retroactive effect for withholding purposes. A person required by this part to deduct and withhold taxes shall rely on this information for withholding purposes unless directed by the department to withhold on some other basis. If a person who receives income subject to withholding under this part fails or refuses to furnish information, the person required by this part to deduct and withhold taxes shall withhold at the full rate of tax from the person's income subject to withholding under this part.

Enacting section 1. This amendatory act takes effect July 1, 2016.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor