

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 361

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
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:

1 Sec. 651. As used in this chapter:

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

1 (b) "Borrower is located in this state" or "credit card holder
2 is located in this state" means a borrower, other than a credit
3 card holder, that is engaged in a trade or business which maintains
4 its commercial domicile in this state, or a borrower that is not
5 engaged in a trade or business or a credit card holder whose
6 billing address is in this state.

7 (c) "Commercial domicile" means the headquarters of the trade
8 or business, that is the place from which the trade or business is
9 principally managed and directed, or if a financial institution is
10 organized under the laws of a foreign country, of the Commonwealth
11 of Puerto Rico, or any territory or possession of the United
12 States, such financial institution's commercial domicile shall be
13 deemed for the purposes of this chapter to be the state of the
14 United States or the District of Columbia from which such financial
15 institution's trade or business in the United States is principally
16 managed and directed. It shall be presumed, subject to rebuttal,
17 that the location from which the financial institution's trade or
18 business is principally managed and directed is the state of the
19 United States or the District of Columbia to which the greatest
20 number of employees are regularly connected or out of which they
21 are working, irrespective of where the services of such employees
22 are performed, as of the last day of the tax year.

23 (d) "Credit card" means a credit, travel, or entertainment
24 card.

25 (e) "Credit card issuer's reimbursement fee" means the fee a
26 financial institution receives from a merchant's bank because 1 of
27 the persons to whom the financial institution has issued a credit

1 card has charged merchandise or services to the credit card.

2 (F) "FFIEC" MEANS THE FEDERAL FINANCIAL INSTITUTIONS
3 EXAMINATION COUNCIL ESTABLISHED PURSUANT TO SECTION 1004 OF THE
4 FINANCIAL INSTITUTIONS REGULATORY AND INTEREST RATE CONTROL ACT OF
5 1978, PUBLIC LAW 95-630, 12 USC 3303.

6 (G) ~~(f)~~—"Financial institution" means any of the following:

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

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

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

17 (H) ~~(g)~~—"Gross business" means the sum of the following less
18 transactions between those entities included in a unitary business
19 group:

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

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

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

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

1 (v) Interest and dividends received.

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

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

19 (J) ~~(i)~~ "Loan secured by real property" means that 50% or more
20 of the aggregate value of the collateral used to secure a loan or
21 other obligation, when valued at fair market value as of the time
22 the original loan or obligation was incurred, was real property.

23 (K) ~~(j)~~ "Merchant discount" means the fee or negotiated
24 discount charged to a merchant by the financial institution for the
25 privilege of participating in a program whereby a credit card is
26 accepted in payment for merchandise or services sold to the credit
27 card holder.

1 (I) ~~(k)~~—"Michigan obligations" means a bond, note, or other
2 obligation issued by a governmental unit described in section 3 of
3 the shared credit rating act, 1985 PA 227, MCL 141.1053.

4 (M) ~~(l)~~—"Participation" means an extension of credit in which
5 an undivided ownership interest is held on a pro rata basis in a
6 single loan or pool of loans and related collateral. In a loan
7 participation, the credit originator initially makes the loan and
8 then subsequently resells all or a portion of it to other lenders.
9 The participation may or may not be known to the borrower.

10 (N) ~~(m)~~—"Principal base of operations", with respect to
11 transportation property, means the place of more or less permanent
12 nature from which said property is regularly directed or
13 controlled. With respect to an employee, the principal base of
14 operations means the place of more or less permanent nature from
15 which the employee regularly does any of the following:

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

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

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

21 (O) ~~(n)~~—"Real property owned" and "tangible personal property
22 owned" mean real and tangible personal property respectively on
23 which the financial institution may claim depreciation for federal
24 income tax purposes or to which the financial institution holds
25 legal title and on which no other person may claim depreciation for
26 federal income tax purposes or could claim depreciation if subject
27 to federal income tax. Real and tangible personal properties do not

1 include coin, currency, or property acquired in lieu of or pursuant
2 to a foreclosure.

3 (P) ~~(e)~~—"Regular place of business" means an office at which
4 the financial institution carries on its business in a regular and
5 systematic manner and which is continuously maintained, occupied,
6 and used by employees of the financial institution. The financial
7 institution shall have the burden of proving that an investment
8 asset or activity or trading asset or activity was properly
9 assigned to a regular place of business outside of this state by
10 demonstrating that the day-to-day decisions regarding the asset or
11 activity occurred at a regular place of business outside this
12 state. Where the day-to-day decisions regarding an investment asset
13 or activity or trading asset or activity occur at more than 1
14 regular place of business and 1 such regular place of business is
15 in this state and 1 such regular place of business is outside this
16 state, such asset or activity shall be considered to be located at
17 the regular place of business of the financial institution where
18 the investment or trading policies or guidelines with respect to
19 the asset or activity are established. Unless the financial
20 institution demonstrates to the contrary, such policies and
21 guidelines shall be presumed to be established at the commercial
22 domicile of the financial institution.

23 (Q) ~~(p)~~—"Rolling stock" means railroad freight or passenger
24 cars, locomotives, or other rail cars.

25 (R) ~~(q)~~—"Syndication" means an extension of credit in which 2
26 or more persons finance the credit and each person is at risk only
27 up to a specified percentage of the total extension of the credit

1 or up to a specified dollar amount.

2 (S) "TOP-TIERED PARENT ENTITY" MEANS THE HIGHEST LEVEL ENTITY
3 WITHIN THE UNITARY BUSINESS GROUP THAT IS REQUIRED TO FILE WITH A
4 REGULATORY AGENCY UNDER THE STANDARDS PRESCRIBED BY THE FFIEC.

5 (T) "TOTAL EQUITY CAPITAL" MEANS THAT SAME AMOUNT REPORTED BY
6 THE FINANCIAL INSTITUTION OR TOP-TIERED PARENT ENTITY, IN THE CASE
7 OF A UNITARY BUSINESS GROUP OF FINANCIAL INSTITUTIONS, AND AS
8 REPORTED FOR THE TAX YEAR ON ANY OF THE FOLLOWING FORMS OR
9 SUCCESSOR FORMS LISTED IN THIS SUBDIVISION AND DESIGNATED BY THE
10 FFIEC, THAT ARE FILED WITH THE OFFICE OF THE COMPTROLLER OF THE
11 CURRENCY, THE FEDERAL DEPOSIT INSURANCE CORPORATION, OR THE FEDERAL
12 RESERVE SYSTEM:

13 (i) THE CONSOLIDATED FINANCIAL STATEMENT FOR HOLDING
14 COMPANIES, FR Y-9C.

15 (ii) THE PARENT COMPANY ONLY FINANCIAL STATEMENTS FOR SMALL
16 HOLDING COMPANIES, FR Y-9SP.

17 (iii) TO THE EXTENT THAT FR Y-9C OR FR Y-9SP ARE NOT FILED FOR
18 THE TAX YEAR, THE CONSOLIDATED REPORTS OF CONDITION AND INCOME,
19 CALL REPORTS, FFIEC 031, 041, OR 051.

20 (iv) A REPORT SIMILAR IN CONTENT AND DESIGNATED BY THE FFIEC.

21 (U) ~~(r)~~—"Transportation property" means vehicles and vessels
22 capable of moving under their own power, such as aircraft, trains,
23 water vessels, and motor vehicles, as well as any equipment or
24 containers attached to such property, such as rolling stock,
25 barges, or trailers.

26 (V) ~~(s)~~—"United States obligations" means all obligations of
27 the United States exempt from taxation under 31 USC 3124(a) or

1 exempt under the United States constitution or any federal statute,
2 including the obligations of any instrumentality or agency of the
3 United States that are exempt from state or local taxation under
4 the United States constitution or any statute of the United States.

5 Sec. 655. (1) For a financial institution, ~~tax base means the~~
6 ~~financial institution's net capital. Net capital means equity~~
7 ~~capital as computed in accordance with generally accepted~~
8 ~~accounting principles less the average daily book value of United~~
9 ~~States obligations and Michigan obligations. If the financial~~
10 ~~institution does not maintain its books and records in accordance~~
11 ~~with generally accepted accounting principles, net capital shall be~~
12 ~~computed in accordance with the books and records used by the~~
13 ~~financial institution, so long as the method fairly reflects the~~
14 ~~financial institution's net capital for purposes of the tax levied~~
15 ~~by this chapter. Net capital does not include up to 125% of the~~
16 ~~minimum regulatory capitalization requirements of a person subject~~
17 ~~to the tax imposed under chapter 12.~~ **THE TAX BASE IS THE TOTAL**
18 **EQUITY CAPITAL OF THE FINANCIAL INSTITUTION OR THE TOP-TIERED**
19 **PARENT ENTITY IN THE CASE OF A UNITARY BUSINESS GROUP OF FINANCIAL**
20 **INSTITUTIONS, SUBJECT TO THE FOLLOWING DEDUCTIONS BEFORE ALLOCATION**
21 **OR APPORTIONMENT:**

22 (A) THE AVERAGE DAILY BOOK VALUE OF UNITED STATES OBLIGATIONS
23 OWNED DURING THE TAX YEAR BY MEMBERS OF THE UNITARY BUSINESS GROUP.

24 (B) THE AVERAGE DAILY BOOK VALUE OF MICHIGAN OBLIGATIONS OWNED
25 DURING THE TAX YEAR BY MEMBERS OF THE UNITARY BUSINESS GROUP.

26 (C) SUBJECT TO THE LIMITATION PROVIDED IN THIS SUBDIVISION,
27 THE EQUITY CAPITAL OF A PERSON THAT IS SUBJECT TO THE TAX IMPOSED

1 UNDER CHAPTER 12, NOT TO EXCEED 125% OF THE MINIMUM REGULATORY
2 CAPITALIZATION REQUIREMENTS OF THE MEMBER. FOR PURPOSES OF THIS
3 SUBDIVISION, "EQUITY CAPITAL" MEANS EQUITY CAPITAL AS CALCULATED IN
4 ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

5 (2) ~~Net capital~~ FOR TAX YEARS BEGINNING ON OR BEFORE DECEMBER
6 31, 2020, THE TAX BASE shall be determined by adding the financial
7 institution's ~~net~~ EQUITY capital as of the close of the current tax
8 year and preceding 4 tax years and dividing the resulting sum by 5.
9 If a financial institution has not been in existence for a period
10 of 5 tax years, ~~net~~ EQUITY capital shall be determined by adding
11 together the financial institution's ~~net~~ EQUITY capital for the
12 number of tax years the financial institution has been in existence
13 and dividing the resulting sum by the number of years the financial
14 institution has been in existence. FOR TAX YEARS BEGINNING AFTER
15 DECEMBER 31, 2020, THE TAX BASE SHALL BE DETERMINED AS OF THE CLOSE
16 OF THE TAX YEAR. For purposes of this section, a partial year shall
17 be treated as a full year.

18 ~~—— (3) For a unitary business group of financial institutions,~~
19 ~~net capital calculated under this section does not include the~~
20 ~~investment of 1 member of the unitary business group in another~~
21 ~~member of that unitary business group.~~

22 (3) ~~(4)~~ For purposes of this section, each of the following
23 applies:

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

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

12 (C) IF A UNITED STATES PERSON INCLUDED IN A UNITARY BUSINESS
13 GROUP OF FINANCIAL INSTITUTIONS OR A FINANCIAL INSTITUTION COMBINED
14 RETURN IS SUBJECT TO TAX UNDER CHAPTER 11 OR 12, ANY BUSINESS
15 INCOME OR EQUITY CAPITAL ATTRIBUTABLE TO THAT PERSON SHALL BE
16 ELIMINATED FROM THE TOTAL EQUITY CAPITAL OF THE UNITARY BUSINESS
17 GROUP AND ANY SALES OR GROSS BUSINESS ATTRIBUTABLE TO THAT PERSON
18 SHALL BE ELIMINATED FROM THE APPORTIONMENT FORMULA UNDER THIS
19 CHAPTER.

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

22 (2) The provisions of section 655 of the income tax act of 1967,
23 1967 PA 281, MCL 206.655, as amended by this amendatory act, are curative
24 and intended to clarify existing law and accurately reflect the
25 interpretation and application of those provisions in accordance with the
26 notice to taxpayers dated November 21, 2016, regarding 5-year averaging
27 calculation of net equity capital for financial institutions.

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