

Act No. 360
Public Acts of 2008
Approved by the Governor
December 23, 2008
Filed with the Secretary of State
December 23, 2008
EFFECTIVE DATE: December 23, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Hammel, Meadows, Palsrok, Brandenburg, Miller, Gonzales, Clack, Calley, Sheltroun, Valentine, Kathleen Law, Simpson, LeBlanc, Byrnes, Hammon, Bauer, Bieda, Caswell, Clemente, Constan, Emmons, Espinoza, Horn, Robert Jones, Leland, Melton, Moolenaar, Nitz, Pearce, Polidori, Proos, Sak, Shaffer and Spade

ENROLLED HOUSE BILL No. 6185

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, and enforcement by lien and otherwise of taxes on or measured by net income; 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 certain acts and parts of acts," by amending sections 351, 355, and 365 (MCL 206.351, 206.355, and 206.365), section 351 as amended by 2003 PA 22, section 355 as amended by 2003 PA 48, and section 365 as amended by 2003 PA 47, and by adding section 366.

The People of the State of Michigan enact:

Sec. 351. (1) 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 (9), 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 commissioner may prescribe withholding tables that may be used by employers to compute the amount of tax required to be withheld.

(2) 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 share of taxable income available for distribution of each nonresident member 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 that the period of time covered by the distributive income is of 1 year. If a flow-through entity is a nonresident member of a separate flow-through entity in this state, the flow-through entity in this state of which it is a member shall withhold the tax as required by this subsection on behalf of the flow-through entity that is a nonresident member and all nonresident members of that flow-through entity that is a nonresident member.

(3) 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.

(4) 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.

(5) 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.

(6) 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, flow-through entity, casino licensee, or race meeting licensee or track licensee within 15 days after the end of any month or as provided in section 355, except prior to July 1, 1993, taxes deposited pursuant to section 19(2) of 1941 PA 122, MCL 205.19, are accrued on the last day of the filing period. For an employer or flow-through entity 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 or flow-through entity within 15 days after the end of any month or as provided in section 355 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 or flow-through entity to a community college under this subsection shall be considered income taxes paid to this state.

(7) An employer, flow-through entity, casino licensee, or race meeting licensee or track licensee required by this section to deduct and withhold taxes on compensation, a share of income available for distribution on which withholding is required under subsection (2), winning on which withholding is required under subsection (3), or a payoff price on which withholding is required under subsection (4) holds the amount of tax withheld as a trustee for the state is liable for the payment of the tax to the state or, if applicable, to the community college and is not liable to any individual for the amount of the payment.

(8) 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.

(9) An employer, flow-through entity, casino licensee, or race meeting licensee or track licensee 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 the employee, nonresident member, or person subject to withholding under subsection (3) or (4) claims more than 9 personal or dependency exemptions, claims a status that exempts the employee, nonresident member, or person subject to withholding under subsection (3) or (4) from withholding under this section, or elects to pay the tax imposed by this act calculated under section 51a.

(10) An employer shall deduct and withhold the tax imposed by this act calculated under section 51a for a resident who files an exemption certificate under subsection (9) to elect to pay the tax calculated under section 51a.

(11) The exemption certificate required by this section shall include the following statement, "Electing to file using the no-form option may not be for everyone who is eligible. If a taxpayer chooses the no-form option, he or she may not be eligible for some of the credits allowed under this act including the property tax credit allowed under sections 520 and 522, the tuition tax credit allowed under section 274, and the city income tax credit allowed under section 257."

(12) As used in this section:

(a) "Casino" means that term as defined in section 110.

(b) "Casino licensee" means a person licensed to operate a casino under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(c) "Race meeting licensee" and "track licensee" mean a person to whom a race meeting license or track license is issued pursuant to section 8 of the horse racing law of 1995, 1995 PA 279, MCL 431.308.

Sec. 355. (1) All provisions relating to the administration, collection, and enforcement of this act apply to the employer, flow-through entity, casino licensee, or race meeting licensee or track licensee required to withhold taxes and to the taxes required to be withheld. If the department has reasonable grounds to believe that an employer, flow-through entity, casino licensee, or race meeting licensee or track licensee will not pay taxes withheld to the state or, if applicable, to the community college, as prescribed by this act, or to provide a more efficient administration, the department may require the employer, flow-through entity, casino licensee, or race meeting licensee or track licensee to make the return and pay to the department or, if applicable, to the community college, the tax deducted and withheld at other than monthly periods, or from time to time, or require the employer, flow-through entity, casino licensee, or race meeting licensee or track licensee to deposit the tax in a bank approved by the department in a separate account, in trust for the department or, if applicable, the community college, and payable to the department or the community college, and to keep the amount of the taxes in the account until payment over to the department or the community college.

(2) Every publicly traded partnership as that term is defined under section 7704 of the internal revenue code 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 file on or before each August 31 all unitholder information from the publicly traded partnership's schedule K-1 for the immediately preceding calendar year by paper or electronic format on a form prescribed by the department.

(3) As used in this section:

(a) "Casino" means that term as defined in section 110.

(b) "Casino licensee" means a person licensed to operate a casino under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(c) "Race meeting licensee" and "track licensee" mean a person to whom a race meeting license or track license is issued pursuant to section 8 of the horse racing law of 1995, 1995 PA 279, MCL 431.308.

Sec. 365. (1) Every employer, flow-through entity, casino licensee, and race meeting licensee and track licensee required by this act to deduct and withhold taxes for a tax year on compensation, share of income available for distribution, winnings, or payoff on a winning ticket shall furnish to each employee, nonresident member, or person with winnings or a payoff on a winning ticket subject to withholding under this act on or before January 31 of the succeeding year a statement in duplicate of the total compensation, share of income available for distribution, winnings, or payoff on a winning ticket paid during the tax year and the amount deducted or withheld. However, if employment is terminated before the close of a calendar year by an employer who goes out of business or permanently ceases to be an employer in this state, or a flow-through entity, casino licensee, race meeting licensee, or track licensee goes out of business or permanently ceases to be a flow-through entity, casino licensee, race meeting licensee, or track licensee before the close of a calendar year, then the statement required by this subsection shall be issued within 30 days after the last compensation, share of income available for distribution, 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 an employer, flow-through entity, casino licensee, and race meeting licensee and track licensee who goes out of business or permanently ceases to be an employer, flow-through entity, casino licensee, and race meeting licensee and track licensee shall file the statement and the annual reconciliation return within 30 days after going out of business or permanently ceasing to be an employer, flow-through entity, casino licensee, and race meeting licensee and track licensee.

(2) Every employer, flow-through entity, casino licensee, and race meeting licensee and track licensee required by this act to deduct or withhold taxes from compensation, share of income available for distribution, winnings, or payoff on a winning ticket shall make a return or report in form and content and at times as prescribed by the department. An employer or flow-through entity 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 employee, nonresident member, or person with winnings or a payoff on a winning ticket subject to withholding under this act shall furnish to his or her employer, flow-through entity, casino licensee, and race meeting licensee and track licensee information required for the employer, flow-through entity, casino licensee, and race meeting licensee and track licensee to make an accurate withholding. An employee, nonresident member, or person with winnings or a payoff on a winning ticket subject to withholding under this act shall file with his or her employer, flow-through entity, casino licensee, and race meeting licensee and track licensee revised information within 10 days after a decrease in the number of exemptions or a change in status from a nonresident to a resident. An employee shall file revised information with his or her employer within 10 days after the employee completes the residency requirements under section 31(11)(d), and when a change of status occurs from resident of a renaissance zone to nonresident of a renaissance zone. Within 10 days after an employer receives revised information from an employee who completes the residency requirements under section 31(11)(d), the employer shall forward a copy of that revised information to the department. The employee, nonresident member, or person with winnings or a payoff on a winning ticket subject to withholding under this act 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. An employer, flow-through entity, casino licensee, and race meeting licensee and track licensee shall rely on this information for withholding purposes unless directed by the department to withhold on some other basis. If an employee, nonresident member, or person with winnings or a payoff on a winning ticket subject to withholding under this act fails or refuses to furnish information, the employer, flow-through entity, casino licensee, and race meeting licensee and track licensee shall withhold the full rate of tax from the employee's total compensation, the nonresident member's share of income available for distribution, or the winnings of a person with winnings or a payoff on a winning ticket subject to withholding under this act. As used in this subsection, "renaissance zone" means a renaissance zone designated pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696.

(4) As used in this section:

(a) "Casino" means that term as defined in section 110.

(b) "Casino licensee" means a person licensed to operate a casino under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(c) "Race meeting licensee" and "track licensee" mean a person to whom a race meeting license or track license is issued pursuant to section 8 of the horse racing law of 1995, 1995 PA 279, MCL 431.308.

Sec. 366. By July 1 of each year, based on the information received from each community college district pursuant to section 163 of the community college act of 1966, 1966 PA 331, MCL 389.163, the department shall submit to the governor, the clerk of the house of representatives, the secretary of the senate, the chairperson of each standing committee that has jurisdiction over economic development issues, the chairperson of each legislative budget subcommittee that has jurisdiction over economic development issues, and the president of the Michigan strategic fund an annual report concerning the operation and effectiveness of the new jobs training programs and the corresponding withholding requirements under this chapter. The report shall include all of the following:

(a) The number of community colleges participating in the new jobs training program and the names of those colleges.

(b) The number of employers that have entered into agreements with community colleges pursuant to the new jobs training program and the names of those employers organized by major industry group under the standard industrial classification code as compiled by the United States department of labor.

(c) The total amount of money from a new jobs credit from withholding each employer described in subdivision (b) has remitted to the community college district.

(d) The total amount of new jobs training revenue bonds each community college district has authorized, issued, or sold.

(e) The total amount of each community college district's debt related to agreements at the end of the calendar year.

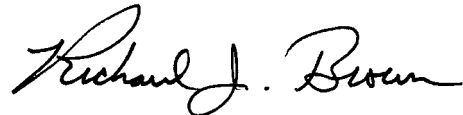
(f) The number of degrees or certificates awarded to program participants in the calendar year.

(g) The number of individuals who entered a program at each community college district in the calendar year; who completed the program in the calendar year; and who were enrolled in a program at the end of the calendar year.

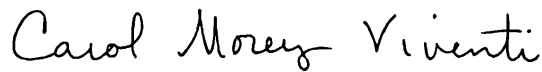
(h) The number of individuals who completed a program and were hired by an employer described in subdivision (b) to fill new jobs.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1342 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor