

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5408**

(As amended, November 20, 2007)

<<A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 105, 239, 265, 403, 405, 409, 413, 417, 445, 447,
and 515 (MCL 208.1105, 208.1239, 208.1265, 208.1403, 208.1405,
208.1409, 208.1413, 208.1417, 208.1445, 208.1447, and 208.1515) and by
adding chapter 2C and section 451.>>

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 105. (1) "Business activity" means a transfer of legal or
2 equitable title to or rental of property, whether real, personal,
3 or mixed, tangible or intangible, or the performance of services,
4 or a combination thereof, made or engaged in, or caused to be made
5 or engaged in, whether in intrastate, interstate, or foreign
6 commerce, with the object of gain, benefit, or advantage, whether

1 direct or indirect, to the taxpayer or to others, but does not
2 include the services rendered by an employee to his or her employer
3 or services as a director of a corporation. Although an activity of
4 a taxpayer may be incidental to another or to other of his or her
5 business activities, each activity shall be considered to be
6 business engaged in within the meaning of this act. **HOWEVER,**
7 **BUSINESS ACTIVITY DOES NOT INCLUDE AN ACTIVITY THAT DOES NOT**
8 **CONSTITUTE A TRADE OR BUSINESS.**

9 (2) "Business income" means that part of federal taxable
10 income derived from business activity. For a partnership or S
11 corporation, business income includes payments and items of income
12 and expense that are attributable to business activity of the
13 partnership or S corporation and separately reported to the
14 partners or shareholders. For an organization that is a mutual or
15 cooperative electric company exempt under section 501(c)(12) of the
16 internal revenue code, business income equals the organization's
17 excess or deficiency of revenues over expenses as reported to the
18 federal government by those organizations exempt from the federal
19 income tax under the internal revenue code, less capital credits
20 paid to members of that organization, less income attributed to
21 equity in another organization's net income, and less income
22 resulting from a charge approved by a state or federal regulatory
23 agency that is restricted for a specified purpose and refundable if
24 it is not used for the specified purpose. For a tax-exempt person,
25 business income means only that part of federal taxable income
26 derived from unrelated business activity.

27 Sec. 239. (1) An insurance company shall be allowed a credit

1 against the tax imposed under this chapter in an amount equal to
2 50% of the examination fees paid by the insurance company during
3 the tax year pursuant to section 224 of the insurance code of 1956,
4 1956 PA 218, MCL 500.224.

5 (2) An insurance company ~~that does not make any of the~~
6 ~~payments described under section 237(1)(a) through (d)~~ may claim a
7 credit against the tax imposed under this act as provided under
8 section 403(2), not to exceed 65% of the insurance company's tax
9 liability for the tax year after claiming the other credits allowed
10 by this chapter.

11 Sec. 265. (1) For a financial institution, tax base means the
12 financial institution's net capital. Net capital means equity
13 capital as computed in accordance with generally accepted
14 accounting principles less goodwill ~~arising from purchase~~
15 ~~accounting adjustments for transactions that occurred after July 1,~~
16 ~~2007,~~ and the **AVERAGE DAILY** book value of United States obligations
17 and Michigan obligations. If the financial institution does not
18 maintain its books and records in accordance with generally
19 accepted accounting principles, net capital shall be computed in
20 accordance with the books and records used by the financial
21 institution, so long as the method fairly reflects the financial
22 institution's net capital for purposes of the tax levied by this
23 chapter. Net capital does not include up to 125% of the minimum
24 regulatory capitalization requirements of a person subject to the
25 tax imposed under chapter 2A.

26 (2) Net capital shall be determined by adding the financial
27 institution's net capital as of the close of the current tax year

1 and preceding 4 tax years and dividing the resulting sum by 5. If a
2 financial institution has not been in existence for a period of 5
3 tax years, net capital shall be determined by adding together the
4 financial institution's net capital for the number of tax years the
5 financial institution has been in existence and dividing the
6 resulting sum by the number of years the financial institution has
7 been in existence. For purposes of this section, a partial year
8 shall be treated as a full year.

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

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

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

25 **CHAPTER 2C**

26 **SEC. 281. (1) IN ADDITION TO THE TAXES IMPOSED AND LEVIED**
27 **UNDER THIS ACT AND SUBJECT TO THE LIMITATIONS PROVIDED UNDER**

1 SUBSECTIONS (2) AND (3), AN ANNUAL SURCHARGE IS IMPOSED AND LEVIED
2 ON EACH TAXPAYER EQUAL TO THE FOLLOWING PERCENTAGE OF THE
3 TAXPAYER'S TAX LIABILITY UNDER THIS ACT AFTER ALLOCATION OR
4 APPORTIONMENT TO THIS STATE UNDER THIS ACT BUT BEFORE CALCULATION
5 OF THE VARIOUS CREDITS AVAILABLE UNDER THIS ACT:

6 (A) FOR EACH TAXPAYER OTHER THAN A PERSON SUBJECT TO THE TAX
7 IMPOSED AND LEVIED UNDER CHAPTER 2B FOR TAX YEARS ENDING AFTER
8 DECEMBER 31, 2007 AND BEFORE JANUARY 1, 2011, 14.0%.

9 (B) FOR A PERSON SUBJECT TO THE TAX IMPOSED AND LEVIED UNDER
10 CHAPTER 2B:

11 (i) FOR TAX YEARS ENDING AFTER DECEMBER 31, 2007 AND BEFORE
12 JANUARY 1, 2009, 27.7%.

13 (ii) FOR TAX YEARS ENDING AFTER DECEMBER 31, 2008 AND BEFORE
14 JANUARY 1, 2011, 23.4%.

15 (2) THE AMOUNT OF THE SURCHARGE IMPOSED AND LEVIED ON ANY
16 TAXPAYER UNDER SUBSECTION (1) (A) SHALL NOT EXCEED \$7,500,000.00 FOR
17 ANY SINGLE TAX YEAR.

18 (3) THE SURCHARGE IMPOSED AND LEVIED UNDER THIS SECTION DOES
19 NOT APPLY TO A PERSON SUBJECT TO THE TAX IMPOSED AND LEVIED UNDER
20 CHAPTER 2A.

21 (4) THE SURCHARGE IMPOSED AND LEVIED UNDER THIS SECTION SHALL
22 CONSTITUTE A PART OF THE TAX IMPOSED UNDER THIS ACT AND SHALL BE
23 ADMINISTERED, COLLECTED, AND ENFORCED AS PROVIDED UNDER THIS ACT.

24 Sec. 403. (1) Notwithstanding any other provision in this act,
25 the credits provided in this section shall be taken before any
26 other credit under this act. The total combined credit allowed
27 under this section shall not exceed 65% of the ~~total~~-tax liability

1 imposed under this act **BEFORE THE IMPOSITION AND LEVY OF THE**
2 **SURCHARGE UNDER SECTION 281.**

3 (2) Subject to the limitation in subsection (1), a taxpayer
4 may claim a credit against the tax imposed by this act equal to
5 0.370% of the taxpayer's compensation in this state. For purposes
6 of this subsection, a taxpayer includes a person ~~described in~~
7 ~~section 239(2) and~~ subject to the tax imposed under chapter 2A **AND**
8 **A PERSON SUBJECT TO THE TAX IMPOSED UNDER CHAPTER 2B.** A
9 professional employer organization shall not include payments by
10 the professional employer organization to the officers and
11 employees of a client of the professional employer organization
12 whose employment operations are managed by the professional
13 employer organization. A client may include payments by the
14 professional employer organization to the officers and employees of
15 the client whose employment operations are managed by the
16 professional employer organization.

17 (3) Subject to the limitation in subsection (1), a taxpayer
18 may claim a credit against the tax imposed by this act equal to
19 2.9% multiplied by the result of subtracting the sum of the amounts
20 calculated under subdivisions (d), (e), and (f) from the sum of the
21 amounts calculated under subdivisions (a), (b), and (c):

22 (a) Calculate the cost, including fabrication and
23 installation, paid or accrued in the taxable year of tangible
24 assets of a type that are, or under the internal revenue code will
25 become, eligible for depreciation, amortization, or accelerated
26 capital cost recovery for federal income tax purposes, provided
27 that the assets are physically located in this state for use in a

1 business activity in this state and are not mobile tangible assets.

2 (b) Calculate the cost, including fabrication and
3 installation, paid or accrued in the taxable year of mobile
4 tangible assets of a type that are, or under the internal revenue
5 code will become, eligible for depreciation, amortization, or
6 accelerated capital cost recovery for federal income tax purposes.
7 This amount shall be multiplied by the apportionment factor for the
8 tax year as prescribed in chapter 3.

9 (c) For tangible assets, other than mobile tangible assets,
10 purchased or acquired for use outside of this state in a tax year
11 beginning after December 31, 2007 and subsequently transferred into
12 this state and purchased or acquired for use in a business
13 activity, calculate the federal basis used for determining gain or
14 loss as of the date the tangible assets were physically located in
15 this state for use in a business activity plus the cost of
16 fabrication and installation of the tangible assets in this state.

17 (d) If the cost of tangible assets described in subdivision
18 (a) was paid or accrued in a tax year beginning after December 31,
19 2007, or before December 31, 2007 to the extent the credit is used
20 and at the rate at which the credit was used under former 1975 PA
21 228 or this act, calculate the gross proceeds or benefit derived
22 from the sale or other disposition of the tangible assets minus the
23 gain, multiplied by the apportionment factor for the taxable year
24 as prescribed in chapter 3, and plus the loss, multiplied by the
25 apportionment factor for the taxable year as prescribed in chapter
26 3 from the sale or other disposition reflected in federal taxable
27 income and minus the gain from the sale or other disposition added

1 to the business income tax base in section 201.

2 (e) If the cost of tangible assets described in subdivision
3 (b) was paid or accrued in a tax year beginning after December 31,
4 2007, or before December 31, 2007 to the extent the credit is used
5 and at the rate at which the credit was used under former 1975 PA
6 228 or this act, calculate the gross proceeds or benefit derived
7 from the sale or other disposition of the tangible assets minus the
8 gain and plus the loss from the sale or other disposition reflected
9 in federal taxable income and minus the gain from the sale or other
10 disposition added to the business income tax base in section 201.
11 This amount shall be multiplied by the apportionment factor for the
12 tax year as prescribed in chapter 3.

13 (f) For assets purchased or acquired in a tax year beginning
14 after December 31, 2007, or before December 31, 2007 to the extent
15 the credit is used and at the rate at which the credit was used
16 under former 1975 PA 228 or this act, that were eligible for a
17 credit under subdivision (a) or (c) and that were transferred out
18 of this state, calculate the federal basis used for determining
19 gain or loss as of the date of the transfer.

20 (4) For a tax year in which the amount of the credit
21 calculated under subsection (3) is negative, the absolute value of
22 that amount is added to the taxpayer's tax liability for the tax
23 year.

24 (5) A taxpayer that claims a credit under this section is not
25 prohibited from claiming a credit under section 405. However, the
26 taxpayer shall not claim a credit under this section and section
27 405 based on the same costs and expenses.

1 Sec. 405. A taxpayer may claim a credit against the tax
2 imposed by this act equal to 1.90% of the taxpayer's research and
3 development expenses in this state in the tax year. The credit
4 under this section combined with the total combined credit allowed
5 under section 403 shall not exceed 75% of the ~~total~~ tax liability
6 imposed under this act **BEFORE THE IMPOSITION AND LEVY OF THE**
7 **SURCHARGE UNDER SECTION 281**. As used in this section, "research and
8 development expenses" means that term as defined in section 41(b)
9 of the internal revenue code.

10 Sec. 409. (1) For tax years that begin on or after January 1,
11 2008 and end before January 1, 2013, an eligible taxpayer may claim
12 a credit against the tax imposed by this act equal to the amount of
13 capital expenditures on infield renovation, grandstand and
14 infrastructure upgrades, and any other construction and upgrades,
15 subject to the following:

16 (a) For the 2008 through 2010 tax years, the credit shall not
17 exceed ~~\$1,700,000.00~~ **\$2,260,000.00** or the taxpayer's tax liability
18 under this act, whichever is less.

19 (b) For the 2011 tax year, the credit shall not exceed
20 \$1,180,000.00 or the taxpayer's tax liability under this act,
21 whichever is less.

22 (c) For the 2012 tax year, the credit shall not exceed
23 \$650,000.00 or the taxpayer's tax liability under this act,
24 whichever is less.

25 **(2) IN ADDITION TO THE CREDIT ALLOWED UNDER SUBSECTION (1), AN**
26 **ELIGIBLE TAXPAYER MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY**
27 **THIS ACT EQUAL TO THE AMOUNT OF NECESSARY EXPENDITURES INCURRED**

1 INCLUDING ANY PROFESSIONAL FEES, ADDITIONAL POLICE OFFICERS, AND
2 ANY TRAFFIC MANAGEMENT DEVICES, TO ENSURE TRAFFIC AND PEDESTRIAN
3 SAFETY WHILE HOSTING THE REQUISITE MOTORSPORTS EVENTS EACH CALENDAR
4 YEAR. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION
5 EXCEEDS THE TAX LIABILITY OF THE TAXPAYER FOR THE TAX YEAR THAT
6 EXCESS SHALL BE REFUNDED.

7 (3) ~~(2)~~—An eligible taxpayer shall expend at least
8 \$25,000,000.00 on capital expenditures before January 1, 2011.

9 (4) ~~(3)~~—As used in this section:

10 (a) "Eligible taxpayer" means any of the following:

11 (i) A person who owns and operates a motorsports entertainment
12 complex and has at least 2 days of ~~motor sports~~ **MOTORSPORTS** events
13 each calendar year which shall be comparable to NASCAR Nextel cup
14 events held in 2007 or their successor events.

15 (ii) A person who is the lessee and operator of a motorsports
16 entertainment complex or the lessee of the land on which a
17 motorsports entertainment complex is located and operates that
18 motorsports entertainment complex.

19 (iii) A person who operates and maintains a motorsports
20 entertainment complex under an operation and management agreement.

21 (b) "Motorsports entertainment complex" means a closed-course
22 motorsports facility, and its ancillary grounds and facilities,
23 that satisfies all of the following:

24 (i) Has at least 70,000 fixed seats for race patrons.

25 (ii) Has at least 6 scheduled days of motorsports events each
26 calendar year.

27 (iii) Serves food and beverages at the motorsports entertainment

1 complex during motorsports events each calendar year through
2 concession outlets, which are staffed by individuals who represent
3 or are members of 1 or more nonprofit civic or charitable
4 organizations that directly benefit from the concession outlets'
5 sales.

6 (iv) Engages in tourism promotion.

7 (v) Has permanent exhibitions of motorsports history, events,
8 or vehicles within the motorsports entertainment complex.

9 (c) "Motorsports event" means a motorsports race and its
10 ancillary activities that have been sanctioned by a sanctioning
11 body.

12 (d) "Sanctioning body" means the American motorcycle
13 association (AMA); auto racing club of America (ARCA); championship
14 auto racing teams (CART); grand American road racing association
15 (GRAND AM); Indy racing league (IRL); national association for
16 stock car auto racing (NASCAR); national hot rod association
17 (NHRA); professional sports car racing (PSR); sports car club of
18 America (SCCA); United States auto club (USAC); Michigan state
19 promoters association; or any successor organization or any other
20 nationally or internationally recognized governing body of
21 motorsports that establishes an annual schedule of motorsports
22 events and grants rights to conduct the events, that has
23 established and administers rules and regulations governing all
24 participants involved in the events and all persons conducting the
25 events, and that requires certain liability assurances, including
26 insurance.

27 Sec. 413. (1) Subject to subsection (2), a taxpayer may claim

1 a credit against the tax imposed by this act equal to the
2 following:

3 (a) For property taxes levied after December 31, 2007, 35% of
4 the amount paid for property taxes on eligible personal property in
5 the tax year.

6 (b) Twenty-three percent of the amount paid for property taxes
7 levied on eligible telephone personal property in the 2008 tax year
8 and 13.5% of the amount paid for property taxes levied on eligible
9 telephone personal property in subsequent tax years.

10 (c) For property taxes levied after December 31, 2007, 10% of
11 the amount paid for property taxes on eligible natural gas pipeline
12 property in the tax year.

13 (2) To qualify for the credit under subsection (1), the
14 taxpayer shall file, if applicable, within the time prescribed each
15 of the following:

16 (a) The statement of assessable personal property prepared
17 pursuant to section 19 of the general property tax act, 1893 PA
18 206, MCL 211.19, identifying the eligible personal property or
19 eligible natural gas pipeline property, or both, for which the
20 credit under subsection (1) is claimed.

21 (b) The annual report filed under section 6 of 1905 PA 282,
22 MCL 207.6, identifying the eligible telephone personal property for
23 which the credit under subsection (1) is claimed.

24 (c) The assessment or bill issued to and paid by the taxpayer
25 for the eligible personal property, eligible natural gas pipeline
26 property, or eligible telephone property for which the credit under
27 subsection (1) is claimed.

1 (3) If the amount of the credit allowed under this section
2 exceeds the tax liability of the taxpayer for the tax year, that
3 excess shall be refunded.

4 (4) As used in this section:

5 (a) "Eligible natural gas pipeline property" means natural gas
6 pipelines that are classified as utility personal property under
7 section 34c of the general property tax act, 1893 PA 206, MCL
8 211.34c, and are subject to regulation under the natural gas act,
9 15 USC 717 to 717z.

10 (b) "Eligible personal property" means personal property that
11 is classified as industrial personal property under section 34c of
12 the general property tax act, 1893 PA 206, MCL 211.34c, or in the
13 case of personal property that is subject to 1974 PA 198, MCL
14 207.551 to 207.572, is situated on land classified as industrial
15 real property under section 34c of the general property tax act,
16 1893 PA 206, MCL 211.34c.

17 (c) "Eligible telephone personal property" means personal
18 property of a telephone company subject to the tax levied under
19 1905 PA 282, MCL 207.1 to 207.21.

20 (d) "Property taxes" means any of the following:

21 (i) Taxes collected under the general property tax act, 1893 PA
22 206, MCL 211.1 to ~~211.157~~ **211.155**.

23 (ii) Taxes levied under 1974 PA 198, MCL 207.551 to 207.572.

24 (iii) Taxes levied under the obsolete property rehabilitation
25 act, 2000 PA 146, MCL 125.2781 to 125.2797.

26 **(iv) TAXES LEVIED UNDER 1905 PA 282, MCL 207.1 TO 207.21.**

27 Sec. 417. (1) The credit provided in this section shall be

1 taken after the credits under sections 403 and 405 and before any
2 other credit under this act and is available to any taxpayer with
3 gross receipts that do not exceed \$20,000,000.00 and with adjusted
4 business income minus the loss adjustment that does not exceed
5 \$1,300,000.00 as adjusted annually for inflation using the Detroit
6 consumer price index and subject to the following:

7 (a) An individual, a partnership, a limited liability company,
8 or a subchapter S corporation is disqualified if the individual,
9 any 1 partner of the partnership, any 1 member of the limited
10 liability company, or any 1 shareholder of the subchapter S
11 corporation receives more than ~~\$180,000.00~~ **\$190,000.00 AS ADJUSTED**
12 **ANNUALLY USING THE ANNUAL GROWTH RATE** as a distributive share of
13 the adjusted business income minus the loss adjustment of the
14 individual, the partnership, the limited liability company, or the
15 subchapter S corporation.

16 (b) A corporation other than a subchapter S corporation is
17 disqualified if either of the following occur for the respective
18 tax year:

19 (i) Compensation and directors' fees of a shareholder or
20 officer exceed ~~\$180,000.00~~ **\$190,000.00 AS ADJUSTED ANNUALLY USING**
21 **THE ANNUAL GROWTH RATE.**

22 (ii) The sum of the following amounts exceeds ~~\$180,000.00~~
23 **\$190,000.00 AS ADJUSTED ANNUALLY USING THE ANNUAL GROWTH RATE:**

24 (A) Compensation and directors' fees of a shareholder.

25 (B) The product of the percentage of outstanding ownership or
26 of outstanding stock owned by that shareholder multiplied by the
27 difference between the sum of business income and, to the extent

1 deducted in determining federal taxable income, a carryback or a
2 carryover of a net operating loss or capital loss, minus the loss
3 adjustment.

4 (c) Subject to the reduction percentage determined under
5 subsection (3), the credit determined under this subsection shall
6 be reduced by the following percentages in the following
7 circumstances:

8 (i) If an individual, any 1 partner of the partnership, any 1
9 member of the limited liability company, or any 1 shareholder of
10 the subchapter S corporation receives as a distributive share of
11 adjusted business income minus the loss adjustment of the
12 individual, partnership, limited liability company, or subchapter S
13 corporation; if compensation and directors' fees of a shareholder
14 or officer of a corporation other than a subchapter S corporation
15 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
16 is more than ~~\$160,000.00~~ **\$170,000.00 AS ADJUSTED ANNUALLY USING THE**
17 **ANNUAL GROWTH RATE** but less than ~~\$165,000.00~~ **\$175,000.00 AS**
18 **ADJUSTED ANNUALLY USING THE ANNUAL GROWTH RATE**, the credit is
19 reduced by 20%.

20 (ii) If an individual, any 1 partner of the partnership, any 1
21 member of the limited liability company, or any 1 shareholder of
22 the subchapter S corporation receives as a distributive share of
23 adjusted business income minus the loss adjustment of the
24 individual, partnership, limited liability company, or subchapter S
25 corporation; if compensation and directors' fees of a shareholder
26 or officer of a corporation other than a subchapter S corporation
27 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)

1 is ~~\$165,000.00~~ **\$175,000.00 AS ADJUSTED ANNUALLY USING THE ANNUAL**
2 **GROWTH RATE** or more but less than ~~\$170,000.00~~ **\$180,000.00 AS**
3 **ADJUSTED ANNUALLY USING THE ANNUAL GROWTH RATE**, the credit is
4 reduced by 40%.

5 (iii) If an individual, any 1 partner of the partnership, any 1
6 member of the limited liability company, or any 1 shareholder of
7 the subchapter S corporation receives as a distributive share of
8 adjusted business income minus the loss adjustment of the
9 individual, partnership, limited liability company, or subchapter S
10 corporation; if compensation and directors' fees of a shareholder
11 or officer of a corporation other than a subchapter S corporation
12 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
13 is ~~\$170,000.00~~ **\$180,000.00 AS ADJUSTED ANNUALLY USING THE ANNUAL**
14 **GROWTH RATE** or more but less than ~~\$175,000.00~~ **\$185,000.00 AS**
15 **ADJUSTED ANNUALLY USING THE ANNUAL GROWTH RATE**, the credit is
16 reduced by 60%.

17 (iv) If an individual, any 1 partner of the partnership, any 1
18 member of the limited liability company, or any 1 shareholder of
19 the subchapter S corporation receives as a distributive share of
20 adjusted business income minus the loss adjustment of the
21 individual, partnership, limited liability company, or subchapter S
22 corporation; if compensation and directors' fees of a shareholder
23 or officer of a corporation other than a subchapter S corporation
24 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
25 is ~~\$175,000.00~~ **\$185,000.00 AS ADJUSTED ANNUALLY USING THE ANNUAL**
26 **GROWTH RATE** or more but not in excess of ~~\$180,000.00~~ **\$190,000.00 AS**
27 **ADJUSTED ANNUALLY USING THE ANNUAL GROWTH RATE**, the credit is

1 reduced by 80%.

2 (2) For the purposes of determining disqualification under
3 subsection (1), an active shareholder's share of business income
4 shall not be attributed to another active shareholder.

5 (3) To determine the reduction percentage under subsection
6 (1)(c), the following apply:

7 (a) The reduction percentage for a partnership, limited
8 liability company, or subchapter S corporation is based on the
9 distributive share of adjusted business income minus loss
10 adjustment of the partner, member, or shareholder with the greatest
11 distributive share of adjusted business income minus loss
12 adjustment.

13 (b) The reduction percentage for a corporation other than a
14 subchapter S corporation is the greater of the following:

15 (i) The reduction percentage based on the compensation and
16 directors' fees of the shareholder or officer with the greatest
17 amount of compensation and directors' fees.

18 (ii) The reduction percentage based on the sum of the amounts
19 in subsection (1)(b)(ii)(A) and (B) for the shareholder or officer
20 with the greatest sum of the amounts in subsection (1)(b)(ii)(A) and
21 (B).

22 (4) A taxpayer that qualifies under subsection (1) is allowed
23 a credit against the tax imposed under this act. The credit under
24 this subsection is the amount by which the tax imposed under this
25 act exceeds 1.8% of adjusted business income.

26 (5) If gross receipts exceed \$19,000,000.00, the credit shall
27 be reduced by a fraction, the numerator of which is the amount of

1 gross receipts over \$19,000,000.00 and the denominator of which is
2 \$1,000,000.00. The credit shall not exceed 100% of the tax
3 liability imposed under this act.

4 (6) For a taxpayer that reports for a tax year less than 12
5 months, the amounts specified in this section for gross receipts,
6 adjusted business income, and share of business income shall be
7 multiplied by a fraction, the numerator of which is the number of
8 months in the tax year and the denominator of which is 12.

9 (7) The department shall permit a taxpayer that elects to
10 claim the credit allowed under this section based on the amount by
11 which the tax imposed under this act exceeds the percentage of
12 adjusted business income for the tax year as determined under
13 subsection (4), and that is not required to reduce the credit
14 pursuant to subsection (1) or (5), to file and pay the tax imposed
15 by this act without computing the tax imposed under sections 201
16 and 203.

17 (8) Compensation paid by the professional employer
18 organization to the officers of the client and to employees of the
19 professional employer organization who are assigned or leased to
20 and perform services for the client shall be included in
21 determining eligibility of the client under this section.

22 (9) As used in this section:

23 (a) "Active shareholder" means a shareholder who receives at
24 least \$10,000.00 in compensation, directors' fees, or dividends
25 from the business, and who owns at least 5% of the outstanding
26 stock or other ownership interest.

27 (b) "Adjusted business income" means business income as

1 defined in section 105 with all of the following adjustments:

2 (i) Add compensation and directors' fees of active shareholders
3 of a corporation.

4 (ii) Add, to the extent deducted in determining federal taxable
5 income, a carryback or a carryover of a net operating loss.

6 (iii) Add, to the extent deducted in determining federal taxable
7 income, a capital loss.

8 (iv) Add compensation and directors' fees of officers of a
9 corporation.

10 (C) "ANNUAL GROWTH RATE" MEANS THE PERCENTAGE CHANGE IN
11 PERSONAL INCOME AS OFFICIALLY REPORTED BY THE UNITED STATES
12 DEPARTMENT OF COMMERCE, BUREAU OF ECONOMIC ANALYSIS, OR ITS
13 SUCCESSOR, FOR THE CURRENT CALENDAR YEAR AS COMPARED TO PERSONAL
14 INCOME FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CURRENT
15 CALENDAR YEAR. THE ANNUAL GROWTH RATE SHALL BE ROUNDED OFF TO THE
16 NEAREST 0.1%.

17 (D) ~~(e)~~—"Detroit consumer price index" means the most
18 comprehensive index of consumer prices available for the Detroit
19 area from the United States department of labor, bureau of labor
20 statistics.

21 (E) ~~(d)~~—"Loss adjustment" means the amount by which adjusted
22 business income was less than zero in any of the 5 tax years
23 immediately preceding the tax year for which eligibility for the
24 credit under this section is being determined. In determining the
25 loss adjustment for a tax year, a taxpayer is not required to use
26 more of the taxpayer's total negative adjusted business income than
27 the amount needed to qualify the taxpayer for the credit under this

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1 section. A taxpayer shall not be considered to have used any
 2 portion of the taxpayer's negative adjusted business income amount
 3 unless the portion used is necessary to qualify for the credit
 4 under this section. A taxpayer shall not reuse a negative adjusted
 5 business income amount used as a loss adjustment in a previous tax
 6 year or use a negative adjusted business income amount from a year
 7 in which the taxpayer did not receive the credit under this
 8 section.

<<Sec. 445. (1) A taxpayer that is a new motor vehicle dealer licensed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, may claim a credit against the tax imposed by this act equal to ~~2%~~1% of the amount paid by the taxpayer to acquire new motor vehicle inventory in the tax year, not to exceed ~~\$10,000.00~~ \$12,500.00.

(2) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall not be refunded and shall not be carried forward as an offset to the tax liability in subsequent tax years.

(3) As used in this section, "new motor vehicle inventory" means new motor vehicles or motor vehicle parts.>>

9 Sec. 447. (1) An eligible taxpayer may claim a credit against
 10 the tax imposed by this act equal to ~~0.535%~~1.0% of the taxpayer's
 11 compensation in this state. ~~not to exceed \$4,500,000.00.~~ **IF THE**
 12 **LIMITATION ON THE AMOUNT OF THE SURCHARGE THAT MAY BE LEVIED AND**
 13 **IMPOSED UPON AN ELIGIBLE TAXPAYER UNDER SECTION 281(1)(A) IS**
 14 **\$2,000,000.00 OR LESS, THEN THE AMOUNT OF THE CREDIT ALLOWED UNDER**
 15 **THIS SECTION SHALL NOT EXCEED \$4,500,000.00.**

16 (2) If the amount of the credit allowed under this section
 17 exceeds the tax liability of the taxpayer for the tax year, that
 18 excess shall not be refunded and shall not be carried forward as an
 19 offset to the tax liability in subsequent tax years.

20 (3) A taxpayer that claims a credit under this section shall
 21 not claim a credit under section 449.

22 (4) As used in this section, "eligible taxpayer" means a
 23 taxpayer that meets all of the following conditions:

24 (a) Operates at least 17,000,000 square feet of enclosed
 25 retail space and 2,000,000 square feet of enclosed warehouse space
 26 in this state.

27 (b) Sells all of the following at retail:

1 (i) Fresh, frozen, or processed food, food products, or
2 consumable necessities:

3 (ii) Prescriptions and over-the-counter medications.

4 (iii) Health and beauty care products.

5 (iv) Cosmetics.

6 (v) Pet products.

7 (vi) Carbonated beverages.

8 (vii) Beer, wine, or liquor.

9 (c) Sales of the items listed in subdivision (b) represent
10 more than 35% of the taxpayer's total sales in the tax year.

11 (d) ~~Maintains its headquarters operation in this state~~ **HAS**
12 **MORE THAN 30,000 EMPLOYEES.**

13 **SEC. 451. (1) AN ELIGIBLE TAXPAYER MAY CLAIM A CREDIT AGAINST**
14 **THE TAX IMPOSED BY THIS ACT EQUAL TO THE FOLLOWING:**

15 (A) FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2008 AND
16 BEFORE JANUARY 1, 2011, 28.5% OF THE TAXPAYER'S EXPENSES INCURRED
17 DURING THE TAX YEAR TO COMPLY WITH 1976 IL 1, MCL 445.571 TO
18 445.576.

19 (B) FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2011, 25%
20 OF THE TAXPAYER'S EXPENSES INCURRED DURING THE TAX YEAR TO COMPLY
21 WITH 1976 IL 1, MCL 445.571 TO 445.576.

22 (2) IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SECTION
23 EXCEEDS THE TAX LIABILITY OF THE TAXPAYER FOR THE TAX YEAR, THAT
24 EXCESS SHALL NOT BE REFUNDED AND SHALL NOT BE CARRIED FORWARD AS AN
25 OFFSET TO THE TAX LIABILITY IN SUBSEQUENT TAX YEARS.

26 (3) AS USED IN THIS SECTION:

27 (A) "BEVERAGE CONTAINER" AND "DISTRIBUTOR" MEAN THOSE TERMS AS

House Bill No. 5408 as amended November 20, 2007

1 DEFINED UNDER 1976 IL 1, MCL 445.571 TO 445.576.

2 (B) "ELIGIBLE TAXPAYER" MEANS A DISTRIBUTOR OR MANUFACTURER
3 WHO ORIGINATES A DEPOSIT ON A BEVERAGE CONTAINER IN ACCORDANCE WITH
4 1976 IL 1, MCL 445.571 TO 445.576.

5 Sec. 515. (1) In fiscal year 2007-2008, ~~\$136,000,000.00~~
6 \$341,000,000.00 of the revenue collected under this act shall be
7 distributed to the school aid fund and the balance shall be
8 deposited into the general fund. In fiscal year 2008-2009,
9 ~~\$479,000,000.00~~ \$729,000,000.00 of the revenue collected under this
10 act shall be distributed to the school aid fund and the balance
11 shall be deposited into the general fund. For each fiscal year
12 after the 2008-2009 fiscal year, that amount from the immediately
13 preceding fiscal year as adjusted by an amount equal to the growth
14 in the United States consumer price index in the immediately
15 preceding year shall be distributed to the school aid fund and the
16 balance shall be deposited into the general fund.

17 (2) As used in this section, "United States consumer price
18 index" means the United States consumer price index for all urban
19 consumers as defined and reported by the United States department
20 of labor, bureau of labor statistics.

21 Enacting section 1. This amendatory act does not take effect
22 unless Senate Bill No. 838 of the 94th Legislature is enacted into
23 law.

24 Enacting section 2. Sections 281 and 451 of the Michigan
25 business tax act, 2007 PA 36, MCL 208.1281 and 208.1451, as added
26 by this amendatory act, and sections 105, 239, 265, 403, 405, 409,
27 413, 417, <<445,>> 447, and 515 of the Michigan business tax act, 2007 PA

House Bill No. 5408 as amended November 20, 2007

1 36, MCL 208.1105, 208.1239, 208.1265, 208.1403, 208.1405, 208.1409,
2 208.1413, 208.1417, <<208.1445,>> 208.1447, and 208.1515, as amended by
this
3 amendatory act, take effect January 1, 2008 and apply to all
4 business activity occurring after December 31, 2007.