

**SUBSTITUTE FOR  
SENATE BILL NO. 69**

A bill to amend 2007 PA 36, entitled  
"Michigan business tax act,"  
by amending sections 417 and 441 (MCL 208.1417 and 208.1441).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 417. (1) The credit provided in this section shall be  
2 taken after the credits under sections 403 and 405 and before any  
3 other credit under this act and is available to any taxpayer with  
4 gross receipts that do not exceed \$20,000,000.00 and with adjusted  
5 business income minus the loss adjustment that does not exceed  
6 ~~\$1,300,000.00~~ **\$1,500,000.00** as adjusted annually for inflation  
7 using the Detroit consumer price index and subject to the  
8 following:

9       (a) An individual, a partnership, a limited liability company,

1 or a subchapter S corporation is disqualified if the individual,  
2 any 1 partner of the partnership, any 1 member of the limited  
3 liability company, or any 1 shareholder of the subchapter S  
4 corporation receives more than ~~\$180,000.00~~ **\$210,000.00** as a  
5 distributive share of the adjusted business income minus the loss  
6 adjustment of the individual, the partnership, the limited  
7 liability company, or the subchapter S corporation.

8 (b) A corporation other than a subchapter S corporation is  
9 disqualified if either of the following occur for the respective  
10 tax year:

11 (i) Compensation and directors' fees of a shareholder or  
12 officer exceed ~~\$180,000.00~~ **\$210,000.00**.

13 (ii) The sum of the following amounts exceeds ~~\$180,000.00~~  
14 **\$210,000.00**:

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

16 (B) The product of the percentage of outstanding ownership or  
17 of outstanding stock owned by that shareholder multiplied by the  
18 difference between the sum of business income and, to the extent  
19 deducted in determining federal taxable income, a carryback or a  
20 carryover of a net operating loss or capital loss, minus the loss  
21 adjustment.

22 (c) Subject to the reduction percentage determined under  
23 subsection (3), the credit determined under this subsection shall  
24 be reduced by the following percentages in the following  
25 circumstances:

26 (i) If an individual, any 1 partner of the partnership, any 1  
27 member of the limited liability company, or any 1 shareholder of

1 the subchapter S corporation receives as a distributive share of  
2 adjusted business income minus the loss adjustment of the  
3 individual, partnership, limited liability company, or subchapter S  
4 corporation; if compensation and directors' fees of a shareholder  
5 or officer of a corporation other than a subchapter S corporation  
6 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
7 is more than ~~\$160,000.00~~ **\$165,000.00** but less than ~~\$165,000.00~~  
8 **\$170,000.00**, the credit is reduced by ~~20%~~ **10%**.

9 (ii) If an individual, any 1 partner of the partnership, any 1  
10 member of the limited liability company, or any 1 shareholder of  
11 the subchapter S corporation receives as a distributive share of  
12 adjusted business income minus the loss adjustment of the  
13 individual, partnership, limited liability company, or subchapter S  
14 corporation; if compensation and directors' fees of a shareholder  
15 or officer of a corporation other than a subchapter S corporation  
16 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
17 is ~~\$165,000.00~~ **\$170,000.00** or more but less than ~~\$170,000.00~~  
18 **\$175,000.00**, the credit is reduced by ~~40%~~ **20%**.

19 (iii) If an individual, any 1 partner of the partnership, any 1  
20 member of the limited liability company, or any 1 shareholder of  
21 the subchapter S corporation receives as a distributive share of  
22 adjusted business income minus the loss adjustment of the  
23 individual, partnership, limited liability company, or subchapter S  
24 corporation; if compensation and directors' fees of a shareholder  
25 or officer of a corporation other than a subchapter S corporation  
26 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
27 is ~~\$170,000.00~~ **\$175,000.00** or more but less than ~~\$175,000.00~~

1 \$180,000.00, the credit is reduced by ~~60%~~30%.

2 (iv) If an individual, any 1 partner of the partnership, any 1  
3 member of the limited liability company, or any 1 shareholder of  
4 the subchapter S corporation receives as a distributive share of  
5 adjusted business income minus the loss adjustment of the  
6 individual, partnership, limited liability company, or subchapter S  
7 corporation; if compensation and directors' fees of a shareholder  
8 or officer of a corporation other than a subchapter S corporation  
9 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
10 is ~~\$175,000.00~~\$180,000.00 or more but ~~not in excess of \$180,000.00~~  
11 LESS THAN \$185,000.00, the credit is reduced by ~~80%~~40%.

12 (v) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1  
13 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF  
14 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF  
15 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE  
16 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S  
17 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER  
18 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION  
19 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B) (ii) (A) AND (B)  
20 IS \$185,000.00 OR MORE BUT LESS THAN \$190,000.00, THE CREDIT IS  
21 REDUCED BY 50%.

22 (vi) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1  
23 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF  
24 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF  
25 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE  
26 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S  
27 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER

1 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION  
2 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B) (ii) (A) AND (B)  
3 IS \$190,000.00 OR MORE BUT LESS THAN \$195,000.00, THE CREDIT IS  
4 REDUCED BY 60%.

5 (vii) 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 \$195,000.00 OR MORE BUT LESS THAN \$200,000.00, THE CREDIT IS  
14 REDUCED BY 70%.

15 (viii) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1  
16 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF  
17 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF  
18 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE  
19 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S  
20 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER  
21 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION  
22 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B) (ii) (A) AND (B)  
23 IS \$200,000.00 OR MORE BUT LESS THAN \$205,000.00, THE CREDIT IS  
24 REDUCED BY 80%.

25 (ix) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1  
26 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF  
27 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF

1 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE  
2 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S  
3 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER  
4 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION  
5 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B) (ii) (A) AND (B)  
6 IS \$205,000.00 OR MORE BUT LESS THAN OR EQUAL TO \$210,000.00, THE  
7 CREDIT IS REDUCED BY 90%.

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

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

13 (a) The reduction percentage for a partnership, limited  
14 liability company, or subchapter S corporation is based on the  
15 distributive share of adjusted business income minus loss  
16 adjustment of the partner, member, or shareholder with the greatest  
17 distributive share of adjusted business income minus loss  
18 adjustment.

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

21 (i) The reduction percentage based on the compensation and  
22 directors' fees of the shareholder or officer with the greatest  
23 amount of compensation and directors' fees.

24 (ii) The reduction percentage based on the sum of the amounts  
25 in subsection (1)(b)(ii)(A) and (B) for the shareholder or officer  
26 with the greatest sum of the amounts in subsection (1)(b)(ii)(A) and  
27 (B).

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

5           (5) If gross receipts exceed \$19,000,000.00, the credit shall  
6 be reduced by a fraction, the numerator of which is the amount of  
7 gross receipts over \$19,000,000.00 and the denominator of which is  
8 \$1,000,000.00. The credit shall not exceed 100% of the tax  
9 liability imposed under this act.

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

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

23           (8) Compensation paid by the professional employer  
24 organization to the officers of the client and to employees of the  
25 professional employer organization who are assigned or leased to  
26 and perform services for the client shall be included in  
27 determining eligibility of the client under this section.

1 (9) As used in this section:

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

6 (b) "Adjusted business income" means business income as  
7 defined in section 105 with all of the following adjustments:

8 (i) Add compensation and directors' fees of active shareholders  
9 of a corporation.

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

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

14 (iv) Add compensation and directors' fees of officers of a  
15 corporation.

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

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



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

8       Sec. 441. (1) For the 2008, 2009, ~~and~~ **2010, 2011, 2012, AND**  
 9 **2013** tax years, except as otherwise provided under subsection (2),  
 10 a taxpayer may claim the Michigan entrepreneurial credit equal to  
 11 100% of the eligible taxpayer's tax liability imposed by this act  
 12 attributable to increased employment under subdivision (b) for ~~3~~  
 13 ~~years~~ **EACH YEAR** if the taxpayer meets all of the following  
 14 conditions:

15       (a) Had less than \$25,000,000.00 in gross receipts in the  
 16 immediately preceding tax year. The \$25,000,000.00 amount shall be  
 17 annually adjusted for inflation using the Detroit consumer price  
 18 index.

19       (b) ~~Has~~ **FOR THE 2008 TAX YEAR, HAS** created in this state or  
 20 transferred into this state not fewer than 20 new jobs in the  
 21 immediately preceding tax year ~~—OR, FOR EACH TAX YEAR AFTER 2008~~  
 22 **THAT THE CREDIT IS AVAILABLE, HAS CREATED IN THIS STATE OR**  
 23 **TRANSFERRED INTO THIS STATE NOT FEWER THAN 8 NEW JOBS IN THE**  
 24 **IMMEDIATELY PRECEDING TAX YEAR.**

25       (c) ~~Has~~ **FOR THE 2008 TAX YEAR, HAS** made a capital investment  
 26 in this state of not less than \$1,250,000.00 in the immediately  
 27 preceding tax year ~~—OR, FOR EACH TAX YEAR AFTER 2008 THAT THE~~

1 CREDIT IS AVAILABLE, HAS MADE A CAPITAL INVESTMENT IN THIS STATE OF  
2 NOT LESS THAN \$500,000.00 IN THE IMMEDIATELY PRECEDING TAX YEAR.

3 For purposes of determining eligibility under this subdivision, the  
4 capital investment shall not include the purchase of an existing  
5 plant or the purchase of existing equipment.

6 (d) Is not a retail establishment as described in major groups  
7 52 through 59 and 70 under the standard industrial classification  
8 code as compiled by the United States department of labor. However,  
9 a restaurant that did not exist, as determined by the treasurer, in  
10 this state in the immediately preceding year before which the  
11 credit is claimed and that is not a franchise or a part of a  
12 unitary business group may qualify for the credit under this  
13 section.

14 (2) A taxpayer that is an eligible business as defined in  
15 section 407 and that received an eligible contribution as defined  
16 in section 407 for which a credit was claimed by another taxpayer  
17 may claim the Michigan entrepreneurial credit equal to 100% of the  
18 taxpayer's tax liability imposed by this act attributable to the  
19 increased employment under subdivision (b) for ~~3 years~~ **EACH YEAR** if  
20 the taxpayer meets all of the following conditions:

21 (a) Had less than \$25,000,000.00 in gross receipts in the  
22 immediately preceding tax year.

23 (b) Has increased the number of new jobs in this state by at  
24 least 20% from the immediately preceding tax year.

25 (3) An eligible taxpayer may claim the credit under this  
26 section on a form prescribed by the department.

27 (4) If the new jobs for which the taxpayer qualifies for this

1 credit are relocated outside of this state within 5 years after  
2 claiming the credit under this section or if the taxpayer reduces  
3 the employment levels by more than 10% of the jobs for which the  
4 taxpayer qualifies for the credit under this section, that taxpayer  
5 is liable in an amount equal to the total of all credits received  
6 under this section. Any liability under this subsection shall be  
7 collected under 1941 PA 122, MCL 205.1 to 205.31.

8 (5) A taxpayer's liability attributable to the increased  
9 employment is the total liability of the taxpayer multiplied by a  
10 fraction the numerator of which is the payroll of the increased  
11 jobs of the facility meeting the requirements of this section and  
12 the denominator of which is the taxpayer's total payroll in this  
13 state.

14 (6) As used in this section:

15 (a) "Detroit consumer price index" means the most  
16 comprehensive index of consumer prices available for the Detroit  
17 area from the United States department of labor, bureau of labor  
18 statistics.

19 (b) "New jobs" means jobs that meet all of the following  
20 criteria:

21 (i) Did not exist in this state in the immediately preceding  
22 tax year.

23 (ii) Represent an overall increase in full-time equivalent jobs  
24 of the taxpayer in this state in the immediately preceding tax  
25 year.

26 (iii) Are not jobs into which employees transfer if the  
27 employees worked in this state for the taxpayer in other jobs prior

1 to beginning the new jobs.

2 (c) "Payroll" means total salaries and wages before deducting  
3 any personal or dependency exemptions.