

HOUSE BILL No. 4003

January 22, 2009, Introduced by Rep. Calley and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 200, 411, 417, and 505 (MCL 208.1200,
208.1411, 208.1417, and 208.1505).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 200. (1) Except as otherwise provided in this act or
2 under subsection (2), a taxpayer has substantial nexus in this
3 state and is subject to the tax imposed under this act if the
4 taxpayer has a physical presence in this state for a period of more
5 than 1 day during the tax year or if the taxpayer actively solicits
6 sales in this state and has gross receipts of \$350,000.00 **AS**
7 **ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE**
8 **INDEX OR 5%, WHICHEVER IS GREATER,** or more sourced to this state.

9 (2) For purposes of this section, "actively solicits" shall be

1 defined by the department through written guidance that shall be
2 applied prospectively.

3 (3) As used in this section, "physical presence" means any
4 activity conducted by the taxpayer or on behalf of the taxpayer by
5 the taxpayer's employee, agent, or independent contractor acting in
6 a representative capacity. Physical presence does not include the
7 activities of professionals providing services in a professional
8 capacity or other service providers if the activity is not
9 significantly associated with the taxpayer's ability to establish
10 and maintain a market in this state.

11 Sec. 411. A taxpayer whose gross receipts allocated or
12 apportioned to this state are greater than \$350,000.00 **AS ADJUSTED**
13 **ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX OR**
14 **5%, WHICHEVER IS GREATER,** but less than \$700,000.00 **AS ADJUSTED**
15 **ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX OR**
16 **5%, WHICHEVER IS GREATER,** may claim a credit against the tax
17 imposed under this act equal to the tax liability after the credit
18 under section 417 multiplied by a fraction the numerator of which
19 is the difference between the person's allocated or apportioned
20 gross receipts and \$700,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION**
21 **USING THE DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER,**
22 and the denominator of which is \$350,000.00 **AS ADJUSTED ANNUALLY**
23 **FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX OR 5%,**
24 **WHICHEVER IS GREATER.**

25 Sec. 417. (1) The credit provided in this section shall be
26 taken after the credits under sections 403 and 405 and before any
27 other credit under this act and is available to any taxpayer with

gross receipts that do not exceed \$20,000,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**, and with adjusted business income minus the loss adjustment that does not exceed \$1,300,000.00 as adjusted annually for inflation using the Detroit consumer price index **OR 5%, WHICHEVER IS GREATER**, and subject to the following:

(a) An individual, a partnership, a limited liability company, or a subchapter S corporation is disqualified if the individual, any 1 partner of the partnership, any 1 member of the limited liability company, or any 1 shareholder of the subchapter S corporation receives more than \$180,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**, as a distributive share of the adjusted business income minus the loss adjustment of the individual, the partnership, the limited liability company, or the subchapter S corporation.

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

(i) Compensation and directors' fees of a shareholder or officer exceed \$180,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**.

(ii) The sum of the following amounts exceeds \$180,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**:

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

(B) The product of the percentage of outstanding ownership or of outstanding stock owned by that shareholder multiplied by the

1 difference between the sum of business income and, to the extent
2 deducted in determining federal taxable income, a carryback or a
3 carryover of a net operating loss or capital loss, minus the loss
4 adjustment.

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

9 (i) 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 more than \$160,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING**
18 **THE DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER,** but
19 less than \$165,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE**
20 **DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER,** the
21 credit is reduced by 20%.

22 (ii) 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 \$165,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT**
4 **CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**, or more but less
5 than \$170,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE**
6 **DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**, the
7 credit is reduced by 40%.

8 (iii) 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 \$170,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT**
17 **CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**, or more but less
18 than \$175,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE**
19 **DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**, the
20 credit is reduced by 60%.

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

1 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
2 is \$175,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT**
3 **CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**, or more but not
4 in excess of \$180,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING**
5 **THE DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**, the
6 credit is reduced by 80%.

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

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

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

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

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

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

27 (4) A taxpayer that qualifies under subsection (1) is allowed

1 a credit against the tax imposed under this act. The credit under
2 this subsection is the amount by which the tax imposed under this
3 act exceeds 1.8% of adjusted business income.

4 (5) If gross receipts exceed \$19,000,000.00 **AS ADJUSTED**
5 **ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX OR**
6 **5%, WHICHEVER IS GREATER**, the credit shall be reduced by a
7 fraction, the numerator of which is the amount of gross receipts
8 over \$19,000,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE**
9 **DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER**, and the
10 denominator of which is \$1,000,000.00 **AS ADJUSTED ANNUALLY FOR**
11 **INFLATION USING THE DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER**
12 **IS GREATER**. The credit shall not exceed 100% of the tax liability
13 imposed under this act.

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

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

27 (8) Compensation paid by the professional employer

1 organization to the officers of the client and to employees of the
2 professional employer organization who are assigned or leased to
3 and perform services for the client shall be included in
4 determining eligibility of the client under this section.

5 (9) As used in this section:

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

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

12 (i) Add compensation and directors' fees of active shareholders
13 of a corporation.

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

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

18 (iv) Add compensation and directors' fees of officers of a
19 corporation.

20 (c) "Detroit consumer price index" means the most
21 comprehensive index of consumer prices available for the Detroit
22 area from the United States department of labor, bureau of labor
23 statistics.

24 (d) "Loss adjustment" means the amount by which adjusted
25 business income was less than zero in any of the 5 tax years
26 immediately preceding the tax year for which eligibility for the
27 credit under this section is being determined. In determining the

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

12 Sec. 505. (1) An annual or final return shall be filed with
13 the department in the form and content prescribed by the department
14 by the last day of the fourth month after the end of the taxpayer's
15 tax year. Any final liability shall be remitted with this return. A
16 taxpayer, other than a taxpayer subject to the tax imposed under
17 chapter 2A or 2B, whose apportioned or allocated gross receipts are
18 less than \$350,000.00 **AS ADJUSTED ANNUALLY FOR INFLATION USING THE**
19 **DETROIT CONSUMER PRICE INDEX OR 5%, WHICHEVER IS GREATER,** does not
20 need to file a return or pay the tax imposed under this act.

21 (2) If a taxpayer has apportioned or allocated gross receipts
22 for a tax year of less than 12 months, the amount in subsection (1)
23 shall be multiplied by a fraction, the numerator of which is the
24 number of months in the tax year and the denominator of which is
25 12.

26 (3) The department, upon application of the taxpayer and for
27 good cause shown, may extend the date for filing the annual return.

1 Interest at the rate under section 23(2) of 1941 PA 122, MCL
2 205.23, shall be added to the amount of the tax unpaid for the
3 period of the extension. The treasurer shall require with the
4 application payment of the estimated tax liability unpaid for the
5 tax period covered by the extension.

6 (4) If a taxpayer is granted an extension of time within which
7 to file the federal income tax return for any tax year, the filing
8 of a copy of the request for extension together with a tentative
9 return and payment of an estimated tax with the department by the
10 due date provided in subsection (1) shall automatically extend the
11 due date for the filing of an annual or final return under this act
12 until the last day of the eighth month following the original due
13 date of the return. Interest at the rate under section 23(2) of
14 1941 PA 122, MCL 205.23, shall be added to the amount of the tax
15 unpaid for the period of the extension.