

HOUSE BILL No. 5384

September 17, 2009, Introduced by Rep. Cushingberry and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 201, 203, 235, 263, 281, 403, and 405 (MCL
208.1201, 208.1203, 208.1235, 208.1263, 208.1281, 208.1403, and
208.1405), sections 201 and 203 as amended by 2008 PA 168, section
235 as amended by 2008 PA 30, section 281 as added and section 405
as amended by 2007 PA 145, and section 403 as amended by 2008 PA
434.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 201. (1) Except as otherwise provided in this act, there
2 is levied and imposed a business income tax on every taxpayer with
3 business activity within this state unless prohibited by 15 USC 381
4 to 384. The business income tax is **LEVIED AND** imposed on the

1 business income tax base, after allocation or apportionment to this
2 state, at the rate of 4.95%.

3 (2) The business income tax base means a taxpayer's business
4 income subject to the following adjustments, before allocation or
5 apportionment, and the adjustments in subsections (5), (6), and (7)
6 after allocation or apportionment:

7 (a) Add interest income and dividends derived from obligations
8 or securities of states other than this state, in the same amount
9 that was excluded from federal taxable income, less the related
10 portion of expenses not deducted in computing federal taxable
11 income because of sections 265 and 291 of the internal revenue
12 code.

13 (b) Add all taxes on or measured by net income and the tax
14 imposed under this act to the extent the taxes were deducted in
15 arriving at federal taxable income.

16 (c) Add any carryback or carryover of a net operating loss to
17 the extent deducted in arriving at federal taxable income.

18 (d) To the extent included in federal taxable income, deduct
19 dividends and royalties received from persons other than United
20 States persons and foreign operating entities, including, but not
21 limited to, amounts determined under section 78 of the internal
22 revenue code or sections 951 to 964 of the internal revenue code.

23 (e) To the extent included in federal taxable income, add the
24 loss or subtract the income from the business income tax base that
25 is attributable to another entity whose business activities are
26 taxable under this section or would be subject to the tax under
27 this section if the business activities were in this state.

1 (f) Except as otherwise provided under this subdivision, to
2 the extent deducted in arriving at federal taxable income, add any
3 royalty, interest, or other expense paid to a person related to the
4 taxpayer by ownership or control for the use of an intangible asset
5 if the person is not included in the taxpayer's unitary business
6 group. The addition of any royalty, interest, or other expense
7 described under this subdivision is not required to be added if the
8 taxpayer can demonstrate that the transaction has a nontax business
9 purpose other than avoidance of this tax, is conducted with arm's-
10 length pricing and rates and terms as applied in accordance with
11 sections 482 and 1274(d) of the internal revenue code, and
12 satisfies 1 of the following:

13 (i) Is a pass through of another transaction between a third
14 party and the related person with comparable rates and terms.

15 (ii) Results in double taxation. For purposes of this
16 subparagraph, double taxation exists if the transaction is subject
17 to tax in another jurisdiction.

18 (iii) Is unreasonable as determined by the treasurer, and the
19 taxpayer agrees that the addition would be unreasonable based on
20 the taxpayer's facts and circumstances.

21 (g) To the extent included in federal taxable income, deduct
22 interest income derived from United States obligations.

23 (h) To the extent included in federal taxable income, deduct
24 any earnings that are net earnings from self-employment as defined
25 under section 1402 of the internal revenue code of the taxpayer or
26 a partner or limited liability company member of the taxpayer
27 except to the extent that those net earnings represent a reasonable

1 return on capital.

2 (i) Subject to the limitation provided under this subdivision,
3 if the book-tax differences for the first fiscal period ending
4 after July 12, 2007 result in a deferred liability for a person
5 subject to tax under this act, deduct the following percentages of
6 the total book-tax difference for each qualifying asset, for each
7 of the successive 15 tax years beginning with the 2015 tax year:

8 (i) For the 2015 through 2019 tax years, 4%.

9 (ii) For the 2020 through 2024 tax years, 6%.

10 (iii) For the 2025 through 2029 tax years, 10%.

11 (3) The deduction under subsection (2)(i) shall not exceed the
12 amount necessary to offset the net deferred tax liability of the
13 taxpayer as computed in accordance with generally accepted
14 accounting principles which would otherwise result from the
15 imposition of the business income tax under this section and the
16 modified gross receipts tax under section 203 if the deduction
17 provided under this subdivision were not allowed. The deduction
18 under subsection (2)(i) is intended to flow through and reduce the
19 surcharge imposed and levied under section 281. For purposes of the
20 calculation of the deduction under subsection (2)(i), a book-tax
21 difference shall only be used once in the calculation of the
22 deduction arising from the taxpayer's business income tax base
23 under this section and once in the calculation of the deduction
24 arising from the taxpayer's modified gross receipts tax base under
25 section 203. The adjustment under subsection (2)(i) shall be
26 calculated without regard to the federal effect of the deduction.
27 If the adjustment under subsection (2)(i) is greater than the

1 taxpayer's business income tax base, any adjustment that is unused
2 may be carried forward and applied as an adjustment to the
3 taxpayer's business income tax base before apportionment in future
4 years. In order to claim this deduction, the department may require
5 the taxpayer to report the amount of this deduction on a form as
6 prescribed by the department that is to be filed on or after the
7 date that the first quarterly return and estimated payment are due
8 under this act. As used in subsection (2)(i) and this subsection:

9 (a) "Book-tax difference" means the difference, if any,
10 between the person's qualifying asset's net book value shown on the
11 person's books and records for the first fiscal period ending after
12 July 12, 2007 and the qualifying asset's tax basis on that same
13 date.

14 (b) "Qualifying asset" means any asset shown on the person's
15 books and records for the first fiscal period ending after July 12,
16 2007, in accordance with generally accepted accounting principles.

17 (4) For purposes of subsections (2) and (3), the business
18 income of a unitary business group is the sum of the business
19 income of each person, other than a foreign operating entity or a
20 person subject to the tax imposed under chapter 2A or 2B, included
21 in the unitary business group less any items of income and related
22 deductions arising from transactions including dividends between
23 persons included in the unitary business group.

24 (5) Deduct any available business loss incurred after December
25 31, 2007. As used in this subsection, "business loss" means a
26 negative business income taxable amount after allocation or
27 apportionment. The business loss shall be carried forward to the

1 year immediately succeeding the loss year as an offset to the
2 allocated or apportioned business income tax base, then
3 successively to the next 9 taxable years following the loss year or
4 until the loss is used up, whichever occurs first, but for not more
5 than 10 taxable years after the loss year.

6 (6) Deduct any gain from the sale of any residential rental
7 units in this state to a qualified affordable housing project that
8 enters an agreement to operate the residential rental units as rent
9 restricted units for a minimum of 15 years. If the qualified
10 affordable housing project does not agree to operate all of the
11 residential rental units as rent restricted units, the deduction
12 under this subsection is limited to an amount equal to the gain
13 from the sale multiplied by a fraction, the numerator of which is
14 the number of those residential rental units purchased that are to
15 be operated as a rent restricted unit and the denominator is the
16 number of all residential rental units purchased. In order to claim
17 this deduction, the department may require the taxpayer and the
18 qualified affordable housing project to report the amount of this
19 deduction on a form as prescribed by the department that is to be
20 signed by both the taxpayer and the qualified affordable housing
21 project and filed with the taxpayer's annual return. The department
22 shall record a lien against the property subject to the operation
23 agreement for the total amount of the deduction allowed under this
24 subsection. The department shall notify the qualified affordable
25 housing project of the maximum amount of the lien that the
26 qualified affordable housing project may be liable for if the
27 qualified affordable housing project fails to qualify and operate

1 as provided in the operation agreement within 15 years after the
2 purchase. The lien shall become payable in an amount as provided
3 under this subsection to the state by the qualified affordable
4 housing project if the qualified affordable housing project fails
5 to qualify as a qualified affordable housing project and fails to
6 operate all or some of the residential rental units as rent
7 restricted units in accordance with the operation agreement entered
8 upon the purchase of those units within 15 years after the
9 deduction is claimed by a taxpayer under this subsection. An amount
10 equal to the product of 100% of the amount of the deduction allowed
11 under this subsection multiplied by a fraction, the numerator of
12 which is the difference between 15 and the number of years the
13 affordable housing project qualified and operated rent restricted
14 units in accordance with the agreement and the denominator is 15,
15 shall be added back to the tax liability of the qualified
16 affordable housing project for the tax year that the qualified
17 affordable housing project fails to comply with the agreement.

18 (7) Subject to the limitations provided in this subsection,
19 for a person that is a qualified affordable housing project, deduct
20 an amount equal to the product of that person's taxable income that
21 is attributable to residential rental units in this state owned by
22 the qualified affordable housing project multiplied by a fraction,
23 the numerator of which is the number of rent restricted units in
24 this state owned by that qualified affordable housing project and
25 the denominator of which is the number of all residential rental
26 units in this state owned by the qualified affordable housing
27 project. The amount of the deduction calculated under this

1 subsection shall be reduced by the amount of limited dividends or
2 other distributions made to the partners, members, or shareholders
3 of the qualified affordable housing project. Taxable income that is
4 attributable to residential rental units does not include income
5 received by the management, construction, or development company
6 for completion and operation of the project and those rental units.

7 (8) If a qualified affordable housing project no longer meets
8 the requirements of subsection (9)(b) or fails to operate those
9 residential rental units as rent restricted units in accordance
10 with the operation agreement and the requirements of subsection
11 (9)(c), the taxpayer is entitled to the deductions under
12 subsections (6) and (7) as long as the qualified affordable housing
13 project continues to offer some of the residential rental units
14 purchased as rent restricted units in accordance with the operation
15 agreement.

16 (9) For purposes of subsections (6), (7), and (8) and this
17 subsection:

18 (a) "Limited dividend housing association" means a limited
19 dividend housing association, corporation, or cooperative organized
20 and qualified pursuant to chapter 7 of the state housing
21 development authority act of 1966, 1966 PA 346, MCL 125.1491 to
22 125.1496.

23 (b) "Qualified affordable housing project" means a person that
24 is organized, qualified, and operated as a limited dividend housing
25 association that has a limitation on the amount of dividends or
26 other distributions that may be distributed to its owners in any
27 given year and has received funding, subsidies, grants, operating

1 support, or construction or permanent funding through 1 or more of
2 the following sources and programs:

3 (i) Mortgage or other financing provided by the Michigan state
4 housing development authority created in section 21 of the state
5 housing development authority act of 1966, 1966 PA 346, MCL
6 125.1421, the United States department of housing and urban
7 development, the United States department of agriculture for rural
8 housing service, the Michigan interfaith housing trust fund,
9 Michigan housing and community development fund, federal home loan
10 bank, housing commission loan, community development financial
11 institution, or mortgage or other funding or guaranteed by Fannie,
12 Ginnie, federal housing association, United States department of
13 agriculture, or federal home loan mortgage corporation.

14 (ii) A tax-exempt bond issued by a nonprofit organization,
15 local governmental unit, or other authority.

16 (iii) A payment in lieu of tax agreement or other tax abatement.

17 (iv) Funding from the state or a local governmental unit
18 through a HOME investments partnership program authorized under 42
19 USC 12741 to 12756.

20 (v) A grant or other funding from a federal home loan bank's
21 affordable housing program.

22 (vi) Financing or funding under the new markets tax credit
23 program under section 45D of the internal revenue code.

24 (vii) Financed in whole or in part under the United States
25 department of housing and urban development's hope VI program as
26 authorized by section 803 of the national affordable housing act,
27 42 USC 8012.

1 (viii) Financed in whole or in part under the United States
2 department of housing and urban development's section 202 program
3 authorized by section 202 of the national housing act, 12 USC
4 1701q.

5 (ix) Financing or funding under the low-income housing tax
6 credit program under section 42 of the internal revenue code.

7 (x) Financing or other subsidies from any new programs similar
8 to any of the above.

9 (c) "Rent restricted unit" means any residential rental unit's
10 rental income is restricted in accordance with section 42(g)(1) of
11 the internal revenue code as if it was a qualified low-income
12 housing project, or receives rental assistance in the form of HUD
13 section 8 subsidies or HUD housing assistance program subsidies, or
14 rental assistance from the United States department of agriculture
15 rural housing programs, or from any of the other programs described
16 under subdivision (b).

17 Sec. 203. (1) Except as otherwise provided in this act, there
18 is levied and imposed a modified gross receipts tax on every
19 taxpayer with nexus as determined under section 200. The modified
20 gross receipts tax is **LEVIED AND** imposed on the modified gross
21 receipts tax base, after allocation or apportionment to this state
22 at a rate of 0.80%.

23 (2) The tax levied and imposed under this section is upon the
24 privilege of doing business and not upon income or property.

25 (3) The modified gross receipts tax base means a taxpayer's
26 gross receipts subject to the adjustment in subsection (6), if
27 applicable, less purchases from other firms before apportionment

1 under this act. The modified gross receipts of a unitary business
2 group is the sum of modified gross receipts of each person, other
3 than a foreign operating entity or a person subject to the tax
4 imposed under chapter 2A or 2B, included in the unitary business
5 group less any modified gross receipts arising from transactions
6 between persons included in the unitary business group.

7 (4) For the 2008 tax year, deduct 65% of any remaining
8 business loss carryforward calculated under section 23b(h) of
9 former 1975 PA 228 that was actually incurred in the 2006 or 2007
10 tax year to the extent not deducted in tax years beginning before
11 January 1, 2008. A deduction under this subsection shall not
12 include any business loss carryforward that was incurred before
13 January 1, 2006. If the taxpayer is a unitary business group, the
14 business loss carryforward under this subsection may only be
15 deducted against the modified gross receipts tax base of that
16 person included in the unitary business group calculated as if the
17 person was not included in the unitary business group.

18 (5) Nothing in this act shall prohibit a taxpayer who
19 qualifies for the credit under section 445 or a taxpayer who is a
20 dealer of new or used personal watercraft from collecting the tax
21 imposed under this section in addition to the sales price. The
22 amount remitted to the department for the tax under this section
23 shall not be less than the stated and collected amount.

24 (6) Subject to the limitations provided in this subsection,
25 for a person that is a qualified affordable housing project, deduct
26 an amount equal to that person's total gross receipts attributable
27 to residential rental units in this state owned by the qualified

1 affordable housing project multiplied by a fraction, the numerator
2 of which is the number of rent restricted units in this state owned
3 by the qualified affordable housing project and the denominator of
4 which is the number of all rental units in this state owned by the
5 qualified affordable housing project. The amount of the deduction
6 calculated under this subsection shall be reduced by the amount of
7 limited dividends or other distributions made to the partners,
8 members, or shareholders of the qualified affordable housing
9 project. Gross receipts attributable to residential rental units do
10 not include amounts received by the management, construction, or
11 development company for completion and operation of the project and
12 those rental units.

13 (7) If a qualified affordable housing project no longer meets
14 the requirements of subsection (8)(b) or fails to operate those
15 residential rental units as rent restricted units in accordance
16 with the operation agreement and the requirements of subsection
17 (8)(c), the qualified affordable housing project is entitled to the
18 deduction under subsection (6) as long as the qualified affordable
19 housing project continues to offer some of the residential rental
20 units purchased as rent restricted units in accordance with the
21 operation agreement.

22 (8) For purposes of subsections (6) and (7) and this
23 subsection:

24 (a) "Limited dividend housing association" means a limited
25 dividend housing association, corporation, or cooperative organized
26 and qualified pursuant to chapter 7 of the state housing
27 development authority act of 1966, 1966 PA 346, MCL 125.1491 to

1 125.1496.

2 (b) "Qualified affordable housing project" means a person that
3 is organized, qualified, and operated as a limited dividend housing
4 association that has a limitation on the amount of dividends or
5 other distributions that may be distributed to its owners in any
6 given year and has received funding, subsidies, grants, operating
7 support, or construction or permanent funding through 1 or more of
8 the following sources and programs:

9 (i) Mortgage or other financing provided by the Michigan state
10 housing development authority created in section 21 of the state
11 housing development authority act of 1966, 1966 PA 346, MCL
12 125.1421, the United States department of housing and urban
13 development, the United States department of agriculture for rural
14 housing service, the Michigan interfaith housing trust fund,
15 Michigan housing and community development fund, federal home loan
16 bank, housing commission loan, community development financial
17 institution, or mortgage or other funding or guaranteed by Fannie,
18 Ginnie, federal housing association, United States department of
19 agriculture, or federal home loan mortgage corporation.

20 (ii) A tax-exempt bond issued by a nonprofit organization,
21 local governmental unit, or other authority.

22 (iii) A payment in lieu of tax agreement or other tax abatement.

23 (iv) Funding from the state or a local governmental unit
24 through a HOME investments partnership program authorized under 42
25 USC 12741 to 12756.

26 (v) A grant or other funding from a federal home loan bank's
27 affordable housing program.

1 (vi) Financing or funding under the new markets tax credit
2 program under section 45D of the internal revenue code.

3 (vii) Financed in whole or in part under the United States
4 department of housing and urban development's hope VI program as
5 authorized by section 803 of the national affordable housing act,
6 42 USC 8012.

7 (viii) Financed in whole or in part under the United States
8 department of housing and urban development's section 202 program
9 authorized by section 202 of the national housing act, 12 USC
10 1701q.

11 (ix) Financing or funding under the low-income housing tax
12 credit program under section 42 of the internal revenue code.

13 (x) Financing or other subsidies from any new programs similar
14 to any of the above.

15 (c) "Rent restricted unit" means any residential rental unit's
16 rental income is restricted in accordance with section 42(g)(1) of
17 the internal revenue code as if it was a qualified low-income
18 housing project, or receives rental assistance in the form of HUD
19 section 8 subsidies or HUD housing assistance program subsidies, or
20 rental assistance from the United States department of agriculture
21 rural housing programs, from any of the other programs described
22 under subdivision (b).

23 Sec. 235. (1) Except as otherwise provided under subsection
24 (4), each insurance company shall pay a tax determined under this
25 chapter.

26 (2) The tax **LEVIED AND** imposed by this chapter on each
27 insurance company shall be a tax equal to 1.25% of gross direct

1 premiums written on property or risk located or residing in this
2 state. Direct premiums do not include any of the following:

3 (a) Premiums on policies not taken.

4 (b) Returned premiums on canceled policies.

5 (c) Receipts from the sale of annuities.

6 (d) Receipts on reinsurance premiums if the tax has been paid
7 on the original premiums.

8 (e) The first \$190,000,000.00 of disability insurance premiums
9 written in this state, other than credit insurance and disability
10 income insurance premiums, of each insurance company subject to tax
11 under this chapter. This exemption shall be reduced by \$2.00 for
12 each \$1.00 by which the insurance company's gross direct premiums
13 from insurance carrier services in this state and outside this
14 state exceed \$280,000,000.00.

15 (3) The tax calculated under this chapter is in lieu of all
16 other privilege or franchise fees or taxes imposed by this act or
17 any other law of this state, except taxes on real and personal
18 property, taxes collected under the general sales tax act, 1933 PA
19 167, MCL 205.1 to 205.78, and taxes collected under the use tax
20 act, 1937 PA 94, MCL 205.91 to 205.111, and except as otherwise
21 provided in the insurance code of 1956, 1956 PA 218, MCL 500.100 to
22 500.8302.

23 (4) The tax imposed and levied under this act does not apply
24 to an insurance company authorized under chapter 46 or 47 of the
25 insurance code of 1956, 1956 PA 218, MCL 500.4601 to 500.4673, and
26 MCL 500.4701 to 500.4747.

27 Sec. 263. (1) Every financial institution with nexus in this

1 state as determined under section 200 is subject to a franchise
2 tax. The franchise tax is **LEVIED AND** imposed upon the tax base of
3 the financial institution as determined under section 265 after
4 allocation or apportionment to this state, at the rate of 0.235%.

5 (2) The tax under this chapter is in lieu of the tax levied
6 and imposed under chapter 2 of this act.

7 Sec. 281. (1) In addition to the taxes imposed and levied
8 under this act and subject to subsections (2), (3), and (4), to
9 meet deficiencies in state funds an annual surcharge is imposed and
10 levied on each taxpayer equal to the following percentage of the
11 taxpayer's tax liability under this act after allocation or
12 apportionment to this state under this act but before calculation
13 of the various credits available under this act:

14 (a) For each taxpayer other than a person subject to the tax
15 imposed and levied under chapter 2B, 21.99%.

16 (b) For a person subject to the tax imposed and levied under
17 chapter 2B:

18 (i) For tax years ending after December 31, 2007 and before
19 January 1, 2009, 27.7%.

20 (ii) For tax years ending after December 31, 2008, 23.4%.

21 (2) If the Michigan personal income growth exceeds 0% in any 1
22 of the 3 calendar years immediately preceding the 2017 calendar
23 year, then the surcharge under subsection (1) shall not be levied
24 and imposed on or after January 1, 2017. For purposes of this
25 subsection, "Michigan personal income" means personal income for
26 this state as defined by the bureau of economic analysis of the
27 United States department of commerce or its successor.

1 (3) The amount of the surcharge imposed and levied on any
2 taxpayer under subsection (1)(a) shall not exceed \$6,000,000.00 for
3 any single tax year.

4 (4) The surcharge imposed and levied under this section does
5 not apply to either of the following:

6 (a) A person subject to the tax imposed and levied under
7 chapter 2A.

8 (b) A person subject to the tax imposed and levied under
9 chapter 2B that is authorized to exercise only trust powers.

10 (5) The surcharge imposed and levied under this section shall
11 constitute a part of the tax imposed **AND LEVIED** under this act and
12 shall be administered, collected, and enforced as provided under
13 this act.

14 Sec. 403. (1) Notwithstanding any other provision in this act,
15 the credits provided in this section shall be taken before any
16 other credit under this act. Except as otherwise provided in
17 subsection (6), for the 2008 tax year, the total combined credit
18 allowed under this section shall not exceed 50% of the tax
19 liability imposed under this act before the imposition and levy of
20 the surcharge under section 281. For ~~the 2009 tax year and each tax~~
21 ~~year after 2009~~ **TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2008**, the
22 total combined credit allowed under this section shall not exceed
23 52% of the tax liability imposed under this act before the
24 imposition and levy of the surcharge under section 281.

25 (2) Subject to the limitation in subsection (1), for the 2008
26 tax year a taxpayer may claim a credit against the tax imposed by
27 this act equal to 0.296% of the taxpayer's compensation in this

1 state. For ~~the 2009 tax year and each tax year after 2009~~ **TAX YEARS**
2 **THAT BEGIN AFTER DECEMBER 31, 2008**, subject to the limitation in
3 subsection (1), a taxpayer may claim a credit against the tax
4 imposed by this act equal to 0.370% of the taxpayer's compensation
5 in this state. For purposes of this subsection, a taxpayer includes
6 a person subject to the tax imposed under chapter 2A and a person
7 subject to the tax imposed under chapter 2B. A professional
8 employer organization shall not include payments by the
9 professional employer organization to the officers and employees of
10 a client of the professional employer organization whose employment
11 operations are managed by the professional employer organization. A
12 client may include payments by the professional employer
13 organization to the officers and employees of the client whose
14 employment operations are managed by the professional employer
15 organization.

16 (3) Subject to the limitation in subsection (1), for the 2008
17 tax year a taxpayer may claim a credit against the tax imposed by
18 this act equal to 2.32% multiplied by the result of subtracting the
19 sum of the amounts calculated under subdivisions (d), (e), and (f)
20 from the sum of the amounts calculated under subdivisions (a), (b),
21 and (c). Subject to the limitation in subsection (1), for ~~the 2009~~
22 ~~tax year and each tax year after 2009~~ **TAX YEARS THAT BEGIN AFTER**
23 **DECEMBER 31, 2008**, a taxpayer may claim a credit against the tax
24 imposed by this act equal to 2.9% multiplied by the result of
25 subtracting the sum of the amounts calculated under subdivisions
26 (d), (e), and (f) from the sum of the amounts calculated under
27 subdivisions (a), (b), and (c):

1 (a) Calculate the cost, including fabrication and
2 installation, paid or accrued in the taxable year of tangible
3 assets of a type that are, or under the internal revenue code will
4 become, eligible for depreciation, amortization, or accelerated
5 capital cost recovery for federal income tax purposes, provided
6 that the assets are physically located in this state for use in a
7 business activity in this state and are not mobile tangible assets.

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

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

23 (d) If the cost of tangible assets described in subdivision
24 (a) was paid or accrued in a tax year beginning after December 31,
25 2007, or before December 31, 2007 to the extent the credit is used
26 and at the rate at which the credit was used under former 1975 PA
27 228 or this act, calculate the gross proceeds or benefit derived

1 from the sale or other disposition of the tangible assets minus the
2 gain, multiplied by the apportionment factor for the taxable year
3 as prescribed in chapter 3, and plus the loss, multiplied by the
4 apportionment factor for the taxable year as prescribed in chapter
5 3 from the sale or other disposition reflected in federal taxable
6 income and minus the gain from the sale or other disposition added
7 to the business income tax base in section 201.

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

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

26 (4) For a tax year in which the amount of the credit
27 calculated under subsection (3) is negative, the absolute value of

1 that amount is added to the taxpayer's tax liability for the tax
2 year.

3 (5) A taxpayer that claims a credit under this section is not
4 prohibited from claiming a credit under section 405. However, the
5 taxpayer shall not claim a credit under this section and section
6 405 based on the same costs and expenses.

7 (6) For a taxpayer primarily engaged in furnishing electric
8 and gas utility service that makes capital investments in electric
9 and gas distribution assets for which a portion of the credit
10 provided under subsection (3) would be denied for the 2008 tax year
11 by reason of the 50% limitation of subsection (1), the 50%
12 limitation on the total combined credit for the 2008 tax year
13 provided in subsection (1) shall be increased by an amount not to
14 exceed the lesser of the amount of the denied credit or 50% of the
15 tax increase under this act accrued for financial reporting
16 purposes due to the elimination of the deduction under section
17 168(k) of the internal revenue code by ~~the amendatory act that~~
18 ~~added this subsection~~ **2008 PA 434**. Provided, however, that the
19 total combined credit allowed under this section for the 2008 tax
20 year shall not exceed 80% of the tax liability imposed under this
21 act after the imposition and levy of the surcharge under section
22 281.

23 Sec. 405. For the 2008 tax year, a taxpayer may claim a credit
24 against the tax imposed by this act equal to 1.52% of the
25 taxpayer's research and development expenses in this state in the
26 tax year. ~~For the 2009 tax year and each tax year after 2009~~ **TAX**
27 **YEARS THAT BEGIN AFTER DECEMBER 31, 2008**, a taxpayer may claim a

1 credit against the tax imposed by this act equal to 1.90% of the
2 taxpayer's research and development expenses in this state in the
3 tax year. The credit under this section combined with the total
4 combined credit allowed under section 403 shall not exceed 65% of
5 the tax liability imposed under this act before the imposition and
6 levy of the surcharge under section 281. As used in this section,
7 "research and development expenses" means that term as defined in
8 section 41(b) of the internal revenue code.