

SENATE BILL No. 69

January 27, 2009, Introduced by Senators CASSIS, GILBERT, JANSEN, BROWN, RICHARDVILLE, PAPPAGEORGE, KAHN and GARCIA and referred to the Committee on Finance.

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,
10 or a subchapter S corporation is disqualified if the individual,

1 any 1 partner of the partnership, any 1 member of the limited
2 liability company, or any 1 shareholder of the subchapter S
3 corporation receives more than ~~\$180,000.00~~ **\$250,000.00** as a
4 distributive share of the adjusted business income minus the loss
5 adjustment of the individual, the partnership, the limited
6 liability company, or the subchapter S corporation.

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

10 (i) Compensation and directors' fees of a shareholder or
11 officer exceed ~~\$180,000.00~~ **\$250,000.00**.

12 (ii) The sum of the following amounts exceeds ~~\$180,000.00~~
13 **\$250,000.00**:

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

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

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

25 (i) 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 more than ~~\$160,000.00~~ **\$230,000.00** but less than ~~\$165,000.00~~
7 **\$235,000.00**, the credit is reduced by 20%.

8 (ii) 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 ~~\$165,000.00~~ **\$235,000.00** or more but less than ~~\$170,000.00~~
17 **\$240,000.00**, the credit is reduced by 40%.

18 (iii) If an individual, any 1 partner of the partnership, any 1
19 member of the limited liability company, or any 1 shareholder of
20 the subchapter S corporation receives as a distributive share of
21 adjusted business income minus the loss adjustment of the
22 individual, partnership, limited liability company, or subchapter S
23 corporation; if compensation and directors' fees of a shareholder
24 or officer of a corporation other than a subchapter S corporation
25 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
26 is ~~\$170,000.00~~ **\$240,000.00** or more but less than ~~\$175,000.00~~
27 **\$245,000.00**, the credit is reduced by 60%.

1 (iv) If an individual, any 1 partner of the partnership, any 1
2 member of the limited liability company, or any 1 shareholder of
3 the subchapter S corporation receives as a distributive share of
4 adjusted business income minus the loss adjustment of the
5 individual, partnership, limited liability company, or subchapter S
6 corporation; if compensation and directors' fees of a shareholder
7 or officer of a corporation other than a subchapter S corporation
8 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
9 is ~~\$175,000.00~~ **\$245,000.00** or more but not in excess of ~~\$180,000.00~~
10 **\$250,000.00**, the credit is reduced by 80%.

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

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

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

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

24 (i) The reduction percentage based on the compensation and
25 directors' fees of the shareholder or officer with the greatest
26 amount of compensation and directors' fees.

27 (ii) The reduction percentage based on the sum of the amounts

1 in subsection (1)(b)(ii)(A) and (B) for the shareholder or officer
2 with the greatest sum of the amounts in subsection (1)(b)(ii)(A) and
3 (B).

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

8 (5) If gross receipts exceed \$19,000,000.00, the credit shall
9 be reduced by a fraction, the numerator of which is the amount of
10 gross receipts over \$19,000,000.00 and the denominator of which is
11 \$1,000,000.00. The credit shall not exceed 100% of the tax
12 liability imposed under this act.

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

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

26 (8) Compensation paid by the professional employer
27 organization to the officers of the client and to employees of the

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

4 (9) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

21 (b) Has created in this state or transferred into this state
22 not fewer than ~~20~~8 new jobs in the immediately preceding tax year.

23 (c) Has made a capital investment in this state of not less
24 than ~~\$1,250,000.00~~ \$500,000.00 in the immediately preceding tax
25 year. For purposes of determining eligibility under this
26 subdivision, the capital investment shall not include the purchase
27 of an existing plant or the purchase of existing equipment.

1 (d) Is not a retail establishment as described in major groups
2 52 through 59 and 70 under the standard industrial classification
3 code as compiled by the United States department of labor. However,
4 a restaurant that did not exist, as determined by the treasurer, in
5 this state in the immediately preceding year before which the
6 credit is claimed and that is not a franchise or a part of a
7 unitary business group may qualify for the credit under this
8 section.

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

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

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

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

22 (4) If the new jobs for which the taxpayer qualifies for this
23 credit are relocated outside of this state within 5 years after
24 claiming the credit under this section or if the taxpayer reduces
25 the employment levels by more than 10% of the jobs for which the
26 taxpayer qualifies for the credit under this section, that taxpayer
27 is liable in an amount equal to the total of all credits received

1 under this section. Any liability under this subsection shall be
2 collected under 1941 PA 122, MCL 205.1 to 205.31.

3 ~~—— (5) A taxpayer's liability attributable to the increased
4 employment is the total liability of the taxpayer multiplied by a
5 fraction the numerator of which is the payroll of the increased
6 jobs of the facility meeting the requirements of this section and
7 the denominator of which is the taxpayer's total payroll in this
8 state.~~

9 (5) ~~(6)~~—As used in this section:

10 (a) "Detroit consumer price index" means the most
11 comprehensive index of consumer prices available for the Detroit
12 area from the United States department of labor, bureau of labor
13 statistics.

14 (b) "New jobs" means jobs that meet all of the following
15 criteria:

16 (i) Did not exist in this state in the immediately preceding
17 tax year.

18 (ii) Represent an overall increase in full-time equivalent jobs
19 of the taxpayer in this state in the immediately preceding tax
20 year.

21 (iii) Are not jobs into which employees transfer if the
22 employees worked in this state for the taxpayer in other jobs prior
23 to beginning the new jobs.

24 ~~—— (c) "Payroll" means total salaries and wages before deducting
25 any personal or dependency exemptions.~~