

HOUSE BILL No. 5008

September 26, 2013, Introduced by Rep. Nesbitt and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 623, 665, and 671 (MCL 206.623, 206.665, and 206.671), section 623 as amended by 2012 PA 414, section 665 as added by 2011 PA 38, and section 671 as amended by 2011 PA 313.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 623. (1) Except as otherwise provided in this part, there
2 is levied and imposed a corporate income tax on every taxpayer with
3 business activity within this state or ownership interest or
4 beneficial interest in a flow-through entity that has business
5 activity in this state unless prohibited by 15 USC 381 to 384. The
6 corporate income tax is imposed on the corporate income tax base,

1 after allocation or apportionment to this state, at the rate of
2 6.0%.

3 (2) The corporate income tax base means a taxpayer's business
4 income subject to the following adjustments, before allocation or
5 apportionment, and the adjustment in subsection (4) after
6 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 including the
14 tax imposed under this part to the extent that the taxes were
15 deducted in 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) Except as otherwise provided under this subdivision, to
24 the extent deducted in arriving at federal taxable income, add any
25 royalty, interest, or other expense paid to a person related to the
26 taxpayer by ownership or control for the use of an intangible asset
27 if the person is not included in the taxpayer's unitary business

1 group. The addition of any royalty, interest, or other expense
2 described under this subdivision is not required to be added if the
3 taxpayer can demonstrate that the transaction has a nontax business
4 purpose, is conducted with arm's-length pricing and rates and terms
5 as applied in accordance with sections 482 and 1274(d) of the
6 internal revenue code, and 1 of the following is true:

7 (i) The transaction is a pass through of another transaction
8 between a third party and the related person with comparable rates
9 and terms.

10 (ii) An addition would result in double taxation. For purposes
11 of this subparagraph, double taxation exists if the transaction is
12 subject to tax in another jurisdiction.

13 (iii) An addition would be unreasonable as determined by the
14 state treasurer.

15 (iv) The related person recipient of the transaction is
16 organized under the laws of a foreign nation which has in force a
17 comprehensive income tax treaty with the United States.

18 (f) To the extent included in federal taxable income, deduct
19 interest income derived from United States obligations.

20 (g) For tax years beginning after December 31, 2011, eliminate
21 all of the following:

22 (i) Income from producing oil and gas to the extent included in
23 federal taxable income.

24 (ii) Expenses of producing oil and gas to the extent deducted
25 in arriving at federal taxable income.

26 (h) For tax years beginning after December 31, 2012, for a
27 qualified taxpayer, eliminate all of the following:

1 (i) Income derived from a mineral to the extent included in
2 federal taxable income.

3 (ii) Expenses related to the income deductible under
4 subparagraph (i) to the extent deducted in arriving at federal
5 taxable income.

6 (3) For purposes of subsection (2), the business income of a
7 unitary business group is the sum of the business income of each
8 person included in the unitary business group less any items of
9 income and related deductions arising from transactions including
10 dividends between persons included in the unitary business group.

11 (4) Deduct any available business loss incurred after December
12 31, 2011. As used in this subsection, "business loss" means a
13 negative business income taxable amount after allocation or
14 apportionment. **FOR PURPOSES OF THIS SUBSECTION, A TAXPAYER THAT**
15 **ACQUIRES THE ASSETS OF ANOTHER CORPORATION IN A TRANSACTION**
16 **DESCRIBED UNDER SECTION 381(A) (1) OR (2) OF THE INTERNAL REVENUE**
17 **CODE MAY DEDUCT ANY BUSINESS LOSS ATTRIBUTABLE TO THAT DISTRIBUTOR**
18 **OR TRANSFEROR CORPORATION.** The business loss shall be carried
19 forward to the year immediately succeeding the loss year as an
20 offset to the allocated or apportioned corporate income tax base,
21 then successively to the next 9 taxable years following the loss
22 year or until the loss is used up, whichever occurs first.

23 (5) As used in this section, "oil and gas" means oil and gas
24 that is subject to severance tax under 1929 PA 48, MCL 205.301 to
25 205.317.

26 Sec. 665. (1) Sales of the taxpayer in this state are
27 determined as follows:

1 (a) Sales of tangible personal property are in this state if
2 the property is shipped or delivered, or, in the case of
3 electricity and gas, the contract requires the property to be
4 shipped or delivered, to any purchaser within this state based on
5 the ultimate destination at the point that the property comes to
6 rest regardless of the free on board point or other conditions of
7 the sales. **PROPERTY STORED IN TRANSIT FOR 60 DAYS OR MORE PRIOR TO**
8 **RECEIPT BY THE PURCHASER OR THE PURCHASER'S DESIGNEE, OR IN THE**
9 **CASE OF A DOCK SALE NOT PICKED UP FOR 60 DAYS OR MORE, SHALL BE**
10 **DEEMED TO HAVE COME TO REST AT THIS ULTIMATE DESTINATION. PROPERTY**
11 **STORED IN TRANSIT FOR FEWER THAN 60 DAYS PRIOR TO RECEIPT BY THE**
12 **PURCHASER OR THE PURCHASER'S DESIGNEE, OR IN THE CASE OF A DOCK**
13 **SALE PICKED UP BEFORE 60 DAYS, IS NOT DEEMED TO HAVE COME TO REST**
14 **AT THIS ULTIMATE DESTINATION. FOR PURPOSES OF THIS SUBDIVISION:**

15 (i) "DOCK SALE" MEANS A SALE IN WHICH THE PURCHASER USES ITS
16 OWN OR RENTED VEHICLES, OR MAKES ARRANGEMENTS WITH A CARRIER, TO
17 PICK UP THE PROPERTY AT THE SELLER'S LOCATION.

18 (ii) "STORED IN TRANSIT" MEANS STORING, STAGING, FORWARDING, OR
19 CONSOLIDATING ACTIVITIES UNDERTAKEN FOR FURTHER SHIPMENT OR
20 TRANSFER OF THE PROPERTY TO THE PURCHASER OR PURCHASER'S DESIGNEE.

21 (b) Receipts from the sale, lease, rental, or licensing of
22 real property are in this state if that property is located in this
23 state.

24 (c) Receipts from the lease or rental of tangible personal
25 property are sales in this state to the extent that the property is
26 utilized in this state. The extent of utilization of tangible
27 personal property in this state is determined by multiplying the

1 receipts by a fraction, the numerator of which is the number of
2 days of physical location of the property in this state during the
3 lease or rental period in the tax year and the denominator of which
4 is the number of days of physical location of the property
5 everywhere during all lease or rental periods in the tax year. If
6 the physical location of the property during the lease or rental
7 period is unknown or cannot be determined, the tangible personal
8 property is utilized in the state in which the property was located
9 at the time the lease or rental payer obtained possession.

10 (d) Receipts from the lease or rental of mobile transportation
11 property owned by the taxpayer are in this state to the extent that
12 the property is used in this state. The extent to which an aircraft
13 will be deemed to be used in this state and the amount of receipts
14 that is to be included in the numerator of this state's sales
15 factor are determined by multiplying all the receipts from the
16 lease or rental of the aircraft by a fraction, the numerator of
17 which is the number of landings of the aircraft in this state and
18 the denominator of which is the total number of landings of the
19 aircraft. If the extent of the use of any transportation property
20 within this state cannot be determined, then the receipts are in
21 this state if the property has its principal base of operations in
22 this state.

23 (e) Royalties and other income received for the use of or for
24 the privilege of using intangible property, including patents,
25 know-how, formulas, designs, processes, patterns, copyrights, trade
26 names, service names, franchises, licenses, contracts, customer
27 lists, custom computer software, or similar items, are attributed

1 to the state in which the property is used by the purchaser. If the
2 property is used in more than 1 state, the royalties or other
3 income shall be apportioned to this state pro rata according to the
4 portion of use in this state. If the portion of use in this state
5 cannot be determined, the royalties or other income shall be
6 excluded from both the numerator and the denominator. Intangible
7 property is used in this state if the purchaser uses the intangible
8 property or the rights to the intangible property in the regular
9 course of its business operations in this state, regardless of the
10 location of the purchaser's customers.

11 (2) Sales from the performance of services are in this state
12 and attributable to this state as follows:

13 (a) Except as otherwise provided in this section, all receipts
14 from the performance of services are included in the numerator of
15 the apportionment factor if the recipient of the services receives
16 all of the benefit of the services in this state. If the recipient
17 of the services receives some of the benefit of the services in
18 this state, the receipts are included in the numerator of the
19 apportionment factor in proportion to the extent that the recipient
20 receives benefit of the services in this state.

21 (b) Sales derived from securities brokerage services
22 attributable to this state are determined by multiplying the total
23 dollar amount of receipts from securities brokerage services by a
24 fraction, the numerator of which is the sales of securities
25 brokerage services to customers within this state, and the
26 denominator of which is the sales of securities brokerage services
27 to all customers. Receipts from securities brokerage services

1 include commissions on transactions, the spread earned on principal
2 transactions in which the broker buys or sells from its account,
3 total margin interest paid on behalf of brokerage accounts owned by
4 the broker's customers, and fees and receipts of all kinds from the
5 underwriting of securities. If receipts from brokerage services can
6 be associated with a particular customer, but it is impractical to
7 associate the receipts with the address of the customer, then the
8 address of the customer shall be presumed to be the address of the
9 branch office that generates the transactions for the customer.

10 (c) Sales of services that are derived directly or indirectly
11 from the sale of management, distribution, administration, or
12 securities brokerage services to, or on behalf of, a regulated
13 investment company or its beneficial owners, including receipts
14 derived directly or indirectly from trustees, sponsors, or
15 participants of employee benefit plans that have accounts in a
16 regulated investment company, shall be attributable to this state
17 to the extent that the shareholders of the regulated investment
18 company are domiciled within this state. For purposes of this
19 subdivision, "domicile" means the shareholder's mailing address on
20 the records of the regulated investment company. If the regulated
21 investment company or the person providing management services to
22 the regulated investment company has actual knowledge that the
23 shareholder's primary residence or principal place of business is
24 different than the shareholder's mailing address, then the
25 shareholder's primary residence or principal place of business is
26 the shareholder's domicile. A separate computation shall be made
27 with respect to the receipts derived from each regulated investment

1 company. The total amount of sales attributable to this state shall
2 be equal to the total receipts received by each regulated
3 investment company multiplied by a fraction determined as follows:

4 (i) The numerator of the fraction is the average of the sum of
5 the beginning-of-year and end-of-year number of shares owned by the
6 regulated investment company shareholders who have their domicile
7 in this state.

8 (ii) The denominator of the fraction is the average of the sum
9 of the beginning-of-year and end-of-year number of shares owned by
10 all shareholders.

11 (iii) For purposes of the fraction, the year shall be the tax
12 year of the regulated investment company that ends with or within
13 the tax year of the taxpayer.

14 (3) Receipts from the origination of a loan or gains from the
15 sale of a loan secured by residential real property are deemed a
16 sale in this state only if 1 or more of the following apply:

17 (a) The real property is located in this state.

18 (b) The real property is located both within this state and 1
19 or more other states and more than 50% of the fair market value of
20 the real property is located within this state.

21 (c) More than 50% of the real property is not located in any 1
22 state and the borrower is located in this state.

23 (4) Interest from loans secured by real property is in this
24 state if the property is located within this state, if the property
25 is located both within this state and 1 or more other states and if
26 more than 50% of the fair market value of the real property is
27 located within this state, or if more than 50% of the fair market

1 value of the real property is not located within any 1 state but
2 the borrower is located in this state. The determination of whether
3 the real property securing a loan is located within this state
4 shall be made as of the time the original agreement was made and
5 any and all subsequent substitutions of collateral shall be
6 disregarded.

7 (5) Interest from a loan not secured by real property is in
8 this state if the borrower is located in this state.

9 (6) Gains from the sale of a loan not secured by real
10 property, including income recorded under the coupon stripping
11 rules of section 1286 of the internal revenue code, are in this
12 state if the borrower is in this state.

13 (7) Receipts from credit card receivables, including interest,
14 fees, and penalties from credit card receivables and receipts from
15 fees charged to cardholders, such as annual fees, are in this state
16 if the billing address of the cardholder is in this state.

17 (8) Receipts from the sale of credit card or other receivables
18 are in this state if the billing address of the customer is in this
19 state. Credit card issuer's reimbursements fees are in this state
20 if the billing address of the cardholder is in this state. Receipts
21 from merchant discounts, computed net of any cardholder
22 chargebacks, but not reduced by any interchange transaction fees or
23 by any issuer's reimbursement fees paid to another for charges made
24 by its cardholders, are in this state if the commercial domicile of
25 the merchant is in this state.

26 (9) Loan servicing fees derived from loans of another secured
27 by real property are in this state if the real property is located

1 in this state, if the real property is located both within and
2 outside of this state and 1 or more states if more than 50% of the
3 fair market value of the real property is located in this state, or
4 if more than 50% of the fair market value of the real property is
5 not located in any 1 state but the borrower is located in this
6 state. Loan servicing fees derived from loans of another not
7 secured by real property are in this state if the borrower is
8 located in this state. If the location of the security cannot be
9 determined, then loan servicing fees for servicing either the
10 secured or the unsecured loans of another are in this state if the
11 lender to whom the loan servicing service is provided is located in
12 this state.

13 (10) Receipts from the sale of securities and other assets
14 from investment and trading activities, including, but not limited
15 to, interest, dividends, and gains are in this state in either of
16 the following circumstances:

17 (a) The person's customer is in this state.

18 (b) If the location of the person's customer cannot be
19 determined, both of the following apply:

20 (i) Interest, dividends, and other income from investment
21 assets and activities and from trading assets and activities,
22 including, but not limited to, investment securities; trading
23 account assets; federal funds; securities purchased and sold under
24 agreements to resell or repurchase; options; futures contracts;
25 forward contracts; notional principal contracts such as swaps;
26 equities; and foreign currency transactions are in this state if
27 the average value of the assets is assigned to a regular place of

1 business of the taxpayer within this state. Interest from federal
2 funds sold and purchased and from securities purchased under resale
3 agreements and securities sold under repurchase agreements is in
4 this state if the average value of the assets is assigned to a
5 regular place of business of the taxpayer within this state. The
6 amount of receipts and other income from investment assets and
7 activities is in this state if assets are assigned to a regular
8 place of business of the taxpayer within this state.

9 (ii) The amount of receipts from trading assets and activities,
10 including, but not limited to, assets and activities in the matched
11 book, in the arbitrage book, and foreign currency transactions, but
12 excluding amounts otherwise sourced in this section, is in this
13 state if the assets are assigned to a regular place of business of
14 the taxpayer within this state.

15 (11) Receipts from transportation services rendered by a
16 person subject to tax in another state are in this state and shall
17 be attributable to this state as follows:

18 (a) Except as otherwise provided in subdivisions (b) through
19 (e), receipts shall be proportioned based on the ratio of revenue
20 miles of the person in this state to the revenue miles of the
21 person everywhere.

22 (b) Receipts from maritime transportation services shall be
23 attributable to this state as follows:

24 (i) 50% of those receipts that either originate or terminate in
25 this state.

26 (ii) 100% of those receipts that both originate and terminate
27 in this state.

1 (c) Receipts attributable to this state of a person whose
2 business activity consists of the transportation both of property
3 and of individuals shall be proportioned based on the total
4 receipts for passenger miles and ton mile fractions, separately
5 computed and individually weighted by the ratio of receipts from
6 passenger transportation to total receipts from all transportation,
7 and by the ratio of receipts from freight transportation to total
8 receipts from all transportation, respectively.

9 (d) Receipts attributable to this state of a person whose
10 business activity consists of the transportation of oil by pipeline
11 shall be proportioned based on the ratio of the receipts for the
12 barrel miles transported in this state to the receipts for the
13 barrel miles transported by the person everywhere.

14 (e) Receipts attributable to this state of a person whose
15 business activities consist of the transportation of gas by
16 pipeline shall be proportioned based on the ratio of the receipts
17 for the 1,000 cubic feet miles transported in this state to the
18 receipts for the 1,000 cubic feet miles transported by the person
19 everywhere.

20 (12) For purposes of subsection (11), if a taxpayer can show
21 that revenue mile information is not available or cannot be
22 obtained without unreasonable expense to the taxpayer, receipts
23 attributable to this state shall be that portion of the revenue
24 derived from transportation services performed everywhere that the
25 miles of transportation services performed in this state bear to
26 the miles of transportation services performed everywhere. If the
27 department determines that the information required for the

1 calculations under subsection (11) are not available or cannot be
2 obtained without unreasonable expense to the taxpayer, the
3 department may use other available information that in the opinion
4 of the department will result in an equitable allocation of the
5 taxpayer's receipts to this state.

6 (13) Except as provided in subsections (14) through (19),
7 receipts from the sale of telecommunications service or mobile
8 telecommunications service are in this state if the customer's
9 place of primary use of the service is in this state. As used in
10 this subsection, "place of primary use" means the customer's
11 residential street address or primary business street address where
12 the customer's use of the telecommunications service primarily
13 occurs. For mobile telecommunications service, the customer's
14 residential street address or primary business street address is
15 the place of primary use only if it is within the licensed service
16 area of the customer's home service provider.

17 (14) Receipts from the sale of telecommunications service sold
18 on an individual call-by-call basis are in this state if either of
19 the following applies:

20 (a) The call both originates and terminates in this state.

21 (b) The call either originates or terminates in this state and
22 the service address is located in this state.

23 (15) Receipts from the sale of postpaid telecommunications
24 service are in this state if the origination point of the
25 telecommunication signal, as first identified by the service
26 provider's telecommunication system or as identified by information
27 received by the seller from its service provider if the system used

1 to transport telecommunication signals is not the seller's, is
2 located in this state.

3 (16) Receipts from the sale of prepaid telecommunications
4 service or prepaid mobile telecommunications service are in this
5 state if the purchaser obtains the prepaid card or similar means of
6 conveyance at a location in this state. Receipts from recharging a
7 prepaid telecommunications service or mobile telecommunications
8 service are in this state if the purchaser's billing information
9 indicates a location in this state.

10 (17) Receipts from the sale of private communication services
11 are in this state as follows:

12 (a) 100% of the receipts from the sale of each channel
13 termination point within this state.

14 (b) 100% of the receipts from the sale of the total channel
15 mileage between each termination point within this state.

16 (c) 50% of the receipts from the sale of service segments for
17 a channel between 2 customer channel termination points, 1 of which
18 is located in this state and the other is located outside of this
19 state, which segments are separately charged.

20 (d) The receipts from the sale of service for segments with a
21 channel termination point located in this state and in 2 or more
22 other states or equivalent jurisdictions, and which segments are
23 not separately billed, are in this state based on a percentage
24 determined by dividing the number of customer channel termination
25 points in this state by the total number of customer channel
26 termination points.

27 (18) Receipts from the sale of billing services and ancillary

1 services for telecommunications service are in this state based on
2 the location of the purchaser's customers. If the location of the
3 purchaser's customers is not known or cannot be determined, the
4 sale of billing services and ancillary services for
5 telecommunications service is in this state based on the location
6 of the purchaser.

7 (19) Receipts to access a carrier's network or from the sale
8 of telecommunications services for resale are in this state as
9 follows:

10 (a) 100% of the receipts from access fees attributable to
11 intrastate telecommunications service that both originates and
12 terminates in this state.

13 (b) 50% of the receipts from access fees attributable to
14 interstate telecommunications service if the interstate call either
15 originates or terminates in this state.

16 (c) 100% of the receipts from interstate end user access line
17 charges, if the customer's service address is in this state. As
18 used in this subdivision, "interstate end user access line charges"
19 includes, but is not limited to, the surcharge approved by the
20 federal communications commission and levied pursuant to 47 CFR 69.

21 (d) Gross receipts from sales of telecommunications services
22 to other telecommunication service providers for resale shall be
23 sourced to this state using the apportionment concepts used for
24 non-resale receipts of telecommunications services if the
25 information is readily available to make that determination. If the
26 information is not readily available, then the taxpayer may use any
27 other reasonable and consistent method.

1 (20) Except as otherwise provided under this subsection, for a
2 taxpayer whose business activities include live radio or television
3 programming as described in subsector code 7922 of industry group
4 792 under the standard industrial classification code as compiled
5 by the United States department of labor or are included in
6 industry groups 483, 484, 781, or 782 under the standard industrial
7 classification code as compiled by the United States department of
8 labor, or any combination of the business activities included in
9 those groups, media receipts are in this state and attributable to
10 this state only if the commercial domicile of the customer is in
11 this state and the customer has a direct connection or relationship
12 with the taxpayer pursuant to a contract under which the media
13 receipts are derived. For media receipts from the sale of
14 advertising, if the customer of that advertising is commercially
15 domiciled in this state and receives some of the benefit of the
16 sale of that advertising in this state, the media receipts from the
17 advertising to that customer are included in the numerator of the
18 apportionment factor in proportion to the extent that the customer
19 receives the benefit of the advertising in this state. For purposes
20 of this subsection, if the taxpayer is a broadcaster and if the
21 customer receives some of the benefit of the advertising in this
22 state, the media receipts for that sale of advertising from that
23 customer shall be proportioned based on the ratio that the
24 broadcaster's viewing or listening audience in this state bears to
25 its total viewing or listening audience everywhere. As used in this
26 subsection:

27 (a) "Media property" means motion pictures, television

1 programs, internet programs and websites, other audiovisual works,
2 and any other similar property embodying words, ideas, concepts,
3 images, or sound without regard to the means or methods of
4 distribution or the medium in which the property is embodied.

5 (b) "Media receipts" means receipts from the sale, license,
6 broadcast, transmission, distribution, exhibition, or other use of
7 media property and receipts from the sale of media services. Media
8 receipts do not include receipts from the sale of media property
9 that is a consumer product that is ultimately sold at retail.

10 (c) "Media services" means services in which the use of the
11 media property is integral to the performance of those services.

12 (21) Terms used in subsections (13) through (20) have the same
13 meaning as those terms defined in the streamlined sales and use tax
14 agreement administered under the streamlined sales and use tax
15 administration act, 2004 PA 174, MCL 205.801 to 205.833.

16 (22) For purposes of this section, a borrower is considered
17 located in this state if the borrower's billing address is in this
18 state.

19 Sec. 671. (1) The credit provided in this section shall be
20 taken before any other credit under this part and is available to
21 any taxpayer, other than those taxpayers subject to the tax imposed
22 under chapter 12 or 13, with gross receipts that do not exceed
23 \$20,000,000.00 and with adjusted business income minus the loss
24 adjustment that does not exceed \$1,300,000.00 as adjusted annually
25 for inflation using the Detroit consumer price index, and subject
26 to the following:

27 (a) A corporation or unitary business group is disqualified if

1 either of the following occurs for the respective tax year:

2 (i) Compensation and directors' fees of a shareholder or
3 officer exceed \$180,000.00.

4 (ii) The sum of the following amounts exceeds \$180,000.00:

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

6 (B) The product of the percentage of outstanding ownership or
7 of outstanding stock owned by that shareholder multiplied by the
8 difference between the following:

9 (I) The sum of business income and, to the extent deducted in
10 determining federal taxable income, a carryback or a carryover of a
11 net operating loss or capital loss.

12 (II) The loss adjustment.

13 (b) Subject to the reduction percentage determined under
14 subsection (3), the credit determined under this subsection shall
15 be reduced by the following percentages in the following
16 circumstances:

17 (i) If compensation and directors' fees of a shareholder or
18 officer are, or if the sum of the amounts in subdivision (a) (ii) (A)
19 and (B) is, more than \$160,000.00 but less than \$165,000.00, the
20 credit is reduced by 20%.

21 (ii) If compensation and directors' fees of a shareholder or
22 officer are, or if the sum of the amounts in subdivision (a) (ii) (A)
23 and (B) is, \$165,000.00 or more but less than \$170,000.00, the
24 credit is reduced by 40%.

25 (iii) If compensation and directors' fees of a shareholder or
26 officer are, or if the sum of the amounts in subdivision (a) (ii) (A)
27 and (B) is, \$170,000.00 or more but less than \$175,000.00, the

1 credit is reduced by 60%.

2 (iv) If compensation and directors' fees of a shareholder or
3 officer are, or if the sum of the amounts in subdivision (a) (ii) (A)
4 and (B) is, \$175,000.00 or more but not in excess of \$180,000.00,
5 the credit is reduced by 80%.

6 (2) For the purposes of determining disqualification under
7 subsection (1), both of the following apply:

8 (a) An active shareholder's share of business income shall not
9 be attributed to another active shareholder.

10 (b) If the taxpayer is a unitary business group, the amount of
11 all items paid or allocable by all persons included in the unitary
12 business group to any 1 individual who is a shareholder or officer
13 of a single person included in the unitary business group shall be
14 combined.

15 (3) The reduction percentage is the greater of the following:

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

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

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

27 (5) If gross receipts exceed \$19,000,000.00, the credit shall

1 be reduced by a fraction, the numerator of which is the amount of
2 gross receipts over \$19,000,000.00 and the denominator of which is
3 \$1,000,000.00. The credit shall not exceed 100% of the tax
4 liability imposed under this part.

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

10 (7) Compensation paid by a professional employer organization
11 to the officers of the client and to employees of the professional
12 employer organization who are assigned or leased to and perform
13 services for the client shall be included in determining
14 eligibility of the client under this section.

15 (8) A disqualifier or reduction under subsection (1) applies
16 to a taxpayer that is a unitary business group if a disqualifier or
17 reduction applies to any member of a unitary business group.

18 (9) As used in this section:

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

23 (b) "Adjusted business income" means business income as
24 defined in section 603 with all of the following adjustments:

25 (i) Add compensation and directors' fees of active shareholders
26 of a corporation.

27 (ii) Add, to the extent deducted in determining federal taxable

1 income, a carryback or carryover of a net operating loss.

2 (iii) Add, to the extent deducted in determining federal taxable
3 income, a carryback or carryover capital loss.

4 (iv) Add compensation and directors' fees of officers of a
5 corporation.

6 (c) "Client" means an entity whose employment operations are
7 managed by a professional employer organization.

8 (d) "Compensation" means all wages, salaries, fees, bonuses,
9 commissions, and other payments made in the tax year on behalf of
10 or for the benefit of employees, officers, or directors of the
11 taxpayers. Compensation includes, but is not limited to, payments
12 that are subject to or specifically exempt or excepted from
13 withholding under sections 3401 to 3406 of the internal revenue
14 code. Compensation also includes, on a cash or accrual basis
15 consistent with the taxpayer's method of accounting for federal
16 income tax purposes, payments to a pension, retirement, or profit
17 sharing plan other than those payments attributable to unfunded
18 accrued actuarial liabilities, and payments for insurance for which
19 employees are the beneficiaries, including payments under health
20 and welfare and noninsured benefit plans and payment of fees for
21 the administration of health and welfare and noninsured benefit
22 plans. Compensation does not include any of the following:

23 (i) Discounts on the price of the taxpayer's merchandise or
24 services sold to the taxpayer's employees, officers, or directors
25 that are not available to other customers.

26 (ii) Except as otherwise provided in this subdivision, payments
27 to an independent contractor.

1 (iii) Payments to state and federal unemployment compensation
2 funds.

3 (iv) The employer's portion of payments under the federal
4 insurance contributions act, chapter 21 of subtitle C of the
5 internal revenue code, 26 USC 3101 to 3128, the railroad retirement
6 tax act, chapter 22 of subtitle C of the internal revenue code, 26
7 USC 3201 to 3233, and similar social insurance programs.

8 (v) Payments, including self-insurance payments, for worker's
9 compensation insurance or federal employers' liability act
10 insurance pursuant to 45 USC 51 to 60.

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

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

1 amount from a year in which the corporation did not receive the
2 credit under this section.

3 (g) "Officer" means an officer of a corporation including all
4 of the following:

5 (i) The chairperson of the board.

6 (ii) The president, vice president, secretary, or treasurer of
7 the corporation or board.

8 (iii) Persons performing similar duties **AND RESPONSIBILITIES** to
9 persons described in subparagraphs (i) and (ii), **THAT INCLUDE, AT A**
10 **MINIMUM, MAJOR DECISION MAKING.**