

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 796

A bill to amend 1967 PA 281, entitled  
"Income tax act of 1967,"  
by amending section 261 (MCL 206.261), as amended by 1996 PA  
484.

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

1       Sec. 261. (1) For the 1989 tax year and each tax year after  
2 1989 and subject to the APPLICABLE limitations in  
3 ~~subsections (2) to (6)~~ THIS SECTION, a taxpayer may credit  
4 against the tax imposed by this act 50% of the amount the tax-  
5 payer contributes during the tax year to an endowment fund of a  
6 community foundation or for the 1992 tax year and each tax year  
7 after 1992 and subject to the APPLICABLE limitations in  
8 ~~subsections (2), (3), and (5)~~ THIS SECTION, a taxpayer may  
9 credit against the tax imposed by this act 50% of the cash amount  
10 the taxpayer contributes during the tax year to a shelter for

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1 homeless persons, food kitchen, food bank, or other entity  
2 located in this state, the primary purpose of which is to provide  
3 overnight accommodation, food, or meals to persons who are indi-  
4 gent if a contribution to that entity is tax deductible for the  
5 donor under the internal revenue code.

6 (2) For a taxpayer other than a resident estate or trust,  
7 the credit allowed by this section for a contribution to a commu-  
8 nity foundation shall not exceed \$100.00, or \$200.00 for a hus-  
9 band and wife filing a joint return [FOR TAX YEARS BEFORE THE 2000  
TAX YEAR AND \$150.00 OR \$300.00 FOR A HUSBAND AND WIFE FILING A  
JOINT RETURN FOR TAX YEARS AFTER THE 1999 TAX YEAR]. For the 1992  
tax year and

10 each tax year after 1992, a taxpayer may claim an additional  
11 credit under this section not to exceed \$100.00, or \$200.00 for a  
12 husband and wife filing a joint return, for total cash contribu-  
13 tions made in the tax year to shelters for homeless persons, food  
14 kitchens, food banks, and, except for community foundations,  
15 other entities allowed under subsection (1). For a resident  
16 estate or trust, the credit allowed by this section for a contri-  
17 bution to a community foundation shall not exceed 10% of the  
18 taxpayer's tax liability for the tax year before claiming any  
19 credits allowed by this act or \$5,000.00, whichever is less. For  
20 the 1992 tax year and each tax year after 1992, a resident estate  
21 or trust may claim an additional credit under this section not to  
22 exceed 10% of the taxpayer's tax liability for the tax year  
23 before claiming any credits allowed by this act or \$5,000.00,  
24 whichever is less, for total cash contributions made in the tax  
25 year to shelters for homeless persons, food kitchens, food banks,  
26 and, except for community foundations, other entities allowed  
27 under subsection (1). For a resident estate or trust, the amount

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1 used to calculate the credits under this section shall not have  
2 been deducted in arriving at federal taxable income.

3 (3) The credits allowed under this section are nonrefundable  
4 so that a taxpayer shall not claim under this section a total  
5 credit amount that reduces the taxpayer's tax liability to less  
6 than zero.

7 (4) As used in this section, "community foundation" means an  
8 organization that applies for certification on or before [~~April 1~~  
MAY 15]  
9 of the tax year for which the taxpayer is claiming the credit and  
10 that the department certifies for that tax year as meeting all of  
11 the following requirements:

12 (a) Qualifies for exemption from federal income taxation  
13 under section 501(c)(3) of the internal revenue code.

14 (b) Supports a broad range of charitable activities within  
15 the specific geographic area of this state that it serves, such  
16 as a municipality or county.

17 (c) Maintains an ongoing program to attract new endowment  
18 funds by seeking gifts and bequests from a wide range of poten-  
19 tial donors in the community or area served.

20 (d) Is publicly supported as defined by the regulations of  
21 the United States department of treasury, 26

22 C.F.R. 1.170A-9(e)(10). TO MAINTAIN CERTIFICATION, THE COMMUNITY  
23 FOUNDATION SHALL SUBMIT DOCUMENTATION TO THE DEPARTMENT ANNUALLY  
24 THAT DEMONSTRATES COMPLIANCE WITH THIS SUBDIVISION.

25 (e) Is not a supporting organization as ~~defined under~~ AN  
26 ORGANIZATION IS DESCRIBED IN section 509(a)(3) of the internal

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1 revenue code and the regulations of the United States department  
2 of treasury, 26 C.F.R. 1.509(a)-4 and 1.509(a)-5.

3 (f) Meets the requirements for treatment as a single entity  
4 contained in the regulations of the United States department of  
5 treasury, 26 C.F.R. 1.170A-9(e)(11).

6 (g)[~~is~~ EXCEPT AS PROVIDED IN SUBSECTION (6), IS] incorporated  
or established as a trust ~~before~~  
7 ~~September 1 of the year immediately preceding the tax year for~~  
8 ~~which the credit is claimed~~ AT LEAST 6 MONTHS BEFORE THE BEGIN-  
9 NING OF THE TAX YEAR FOR WHICH THE CREDIT UNDER THIS SECTION IS  
10 CLAIMED AND THAT HAS AN ENDOWMENT VALUE OF AT LEAST \$100,000.00  
11 BEFORE THE EXPIRATION OF 18 MONTHS AFTER THE COMMUNITY FOUNDATION  
12 IS INCORPORATED OR ESTABLISHED.

13 (H) HAS AN INDEPENDENT GOVERNING BODY REPRESENTING THE GEN-  
14 ERAL PUBLIC'S INTEREST AND THAT IS NOT APPOINTED BY A SINGLE OUT-  
15 SIDE ENTITY.

16 (I) PROVIDES EVIDENCE TO THE DEPARTMENT THAT THE COMMUNITY  
17 FOUNDATION HAS, BEFORE THE EXPIRATION OF 6 MONTHS AFTER THE COM-  
18 MUNITY FOUNDATION IS INCORPORATED OR ESTABLISHED, AND MAINTAINS  
19 CONTINUALLY DURING THE TAX YEAR FOR WHICH THE CREDIT UNDER THIS  
20 SECTION IS CLAIMED, AT LEAST 1 PART-TIME OR FULL-TIME EMPLOYEE.

21 (J) FOR COMMUNITY FOUNDATIONS THAT HAVE AN ENDOWMENT VALUE  
22 OF \$1,000,000.00 OR MORE ONLY, THE COMMUNITY FOUNDATION IS  
23 SUBJECT TO AN ANNUAL INDEPENDENT FINANCIAL AUDIT AND PROVIDES  
24 COPIES OF THAT AUDIT TO THE DEPARTMENT NOT MORE THAN 3 MONTHS  
25 AFTER THE COMPLETION OF THE AUDIT. FOR COMMUNITY FOUNDATIONS  
26 THAT HAVE AN ENDOWMENT VALUE OF LESS THAN \$1,000,000.00, THE

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1 COMMUNITY FOUNDATION IS SUBJECT TO AN ANNUAL REVIEW AND AN AUDIT  
2 EVERY THIRD YEAR.

3 (K) IN ADDITION TO ALL OTHER CRITERIA LISTED IN THIS SUBSEC-  
4 TION FOR A COMMUNITY FOUNDATION THAT IS INCORPORATED OR ESTAB-  
5 LISHED AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
6 THIS SUBDIVISION, OPERATES IN A COUNTY OF THIS STATE THAT WAS NOT  
7 SERVED BY A COMMUNITY FOUNDATION WHEN THE COMMUNITY FOUNDATION  
8 WAS INCORPORATED OR ESTABLISHED OR OPERATES AS A GEOGRAPHIC COM-  
9 PONENT OF AN EXISTING CERTIFIED COMMUNITY FOUNDATION.

10 (5) An entity other than a community foundation may request  
11 that the department determine if a contribution to that entity  
12 qualifies for the credit under this section. The department  
13 shall make a determination and respond to a request no later than  
14 30 days after the department receives the request.

[(6) A TAXPAYER MAY CLAIM A CREDIT UNDER THIS SECTION FOR  
CONTRIBUTIONS TO A COMMUNITY FOUNDATION MADE BEFORE THE EXPIRATION  
OF THE 18-MONTH PERIOD AFTER A COMMUNITY FOUNDATION WAS INCORPORATED  
OR ESTABLISHED DURING WHICH THE COMMUNITY FOUNDATION MUST BUILD AN  
ENDOWMENT VALUE OF \$100,000.00 AS PROVIDED IN SUBSECTION (4)(G). IF  
THE COMMUNITY FOUNDATION DOES NOT REACH THE REQUIRED \$100,000.00  
ENDOWMENT VALUE DURING THAT 18-MONTH PERIOD, CONTRIBUTIONS TO THE  
COMMUNITY FOUNDATION MADE AFTER THE DATE ON WHICH THE 18-MONTH  
PERIOD EXPIRES SHALL NOT BE USED TO CALCULATE A CREDIT UNDER THIS  
SECTION. AT ANY TIME AFTER THE EXPIRATION OF THE 18-MONTH PERIOD  
UNDER SUBSECTION (4)(G) THAT THE COMMUNITY FOUNDATION HAS AN  
ENDOWMENT VALUE OF \$100,000.00, THE COMMUNITY FOUNDATION MAY APPLY  
TO THE DEPARTMENT FOR CERTIFICATION UNDER THIS SECTION.]

15 [(7)] On or before July 1 of each year, the department shall  
16 report to the house committee on tax policy and the senate  
17 finance committee the total amount of tax credits claimed under  
18 this section and under section 38c of the single business tax  
19 act, ~~Act No. 228 of the Public Acts of 1975, being~~  
20 ~~section 208.38c of the Michigan Compiled Laws~~ 1975 PA 228, MCL  
21 208.38C, for the immediately preceding tax year.