

Act No. 319
Public Acts of 2004
Approved by the Governor
August 27, 2004
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August 27, 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senator Brown

ENROLLED SENATE BILL No. 1274

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," (MCL 208.1 to 208.145) by adding section 37f.

The People of the State of Michigan enact:

Sec. 37f. (1) For tax years that begin after December 31, 2004 and before January 1, 2006, a taxpayer with gross receipts of \$10,000,000.00 or less for a tax year may claim a credit against the tax imposed by this act equal to the following percentages of compensation paid by the taxpayer to employees who perform created jobs, as determined under subsection (2), for that tax year in the following circumstances:

- (a) If the taxpayer makes capital investment in this state of less than \$150,000.00 in the tax year, 0.50%.
- (b) If the taxpayer makes capital investment in this state of \$150,000.00 or more but less than \$750,000.00, 1.5%.
- (c) If the taxpayer makes capital investment in this state of \$750,000.00 or more in the tax year, 2.0%.

(2) Compensation paid to employees who perform created jobs for purposes of subsection (1) is determined as follows:

(a) For tax years that begin in 2004 and 2005, determine for each tax year the full-time equivalent job for each employee, which shall be the lesser of the following:

- (i) An employment period ratio, which is equal to the employee's weeks worked in the tax year divided by 52.
- (ii) An hours worked ratio, which is equal to the employee's hours worked during the tax year divided by the full-time equivalent annual hours of work set by the taxpayer. Each taxpayer shall set a full-time equivalent annual hours of work standard which shall be not less than 1,750 hours and not more than 2,080 hours.

(b) For the tax year that begins in 2005, determine the average compensation for full-time equivalent new jobs that perform high-technology activity or manufacturing jobs as follows:

- (i) For the tax year that begins in 2005, calculate the sum of full-time equivalent jobs calculated in subdivision (a) for employees who perform high-technology activity or manufacturing jobs and who were hired in the tax year.
- (ii) Determine the total compensation, not to exceed \$85,000.00 per employee, paid for all jobs under subparagraph (i).
- (iii) Divide the amount determined under subparagraph (ii) by the number determined under subparagraph (i).

(c) Determine the number of created jobs, which shall be determined as follows:

(i) For the tax year that begins in 2004, calculate the sum of the number of full-time equivalent jobs calculated under subdivision (a) for all employees.

(ii) For the tax year that begins in 2005, calculate the sum of the number of full-time equivalent jobs calculated under subdivision (a) for all employees.

(iii) Subtract the number under subparagraph (i) from the number under subparagraph (ii).

(iv) Determine the lesser of (b)(i) and (c)(iii).

(d) Multiply the number under subdivision (c)(iv) by the 2005 average compensation under subdivision (b)(iii).

(3) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 10 tax years or until the excess credit is used up, whichever occurs first.

(4) A member of an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 CFR 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall determine gross receipts for purposes of this section on a consolidated basis.

(5) For purposes of determining compensation paid to employees, the taxpayer shall not include compensation paid to a spouse, parent, sibling, child, stepchild, adopted child, or stepparent of an active shareholder or officer, a shareholder of an S corporation, a partner of a partnership, a member of a limited liability company, or an individual who is a sole proprietor.

(6) The capital investment threshold for purposes of subsection (1) must be met at the principal place of employment of any employee of the taxpayer who performs a created job.

(7) For purposes of the credit under this section, leased employees are considered employees of the entity whose employment operations are managed by a professional employer organization.

(8) As used in this section:

(a) "Active shareholder" and "officer" mean those terms as defined in section 36.

(b) "Capital investment" means investment that can be used to calculate a credit under section 35a.

(c) "Created jobs" means jobs that meet all of the following criteria:

(i) Are jobs that perform high-technology activity or manufacturing jobs.

(ii) Did not exist in this state in the immediately preceding tax year.

(iii) Represent an overall increase in full-time equivalent jobs of the taxpayer in this state for the tax year above the total number of full-time equivalent jobs of the taxpayer in the immediately preceding tax year.

(iv) Is not a job into which an employee transfers if the employee worked in this state for the taxpayer, a related entity of the taxpayer, or an entity with which the taxpayer files a consolidated return under section 77 in another job prior to beginning the created job.

(v) The benefits for the employee in the created job include coverage under health and welfare and noninsured benefit plans, including, but not limited to, prescription coverage, primary health care coverage, and hospitalization that is not limited to emergency room services or subject to dollar limits, deductibles, and coinsurance provisions that are not less favorable than those for physical illness generally.

(vi) Is not a qualified new job used to calculate a credit under section 37c or 37d.

(d) "High-technology activity" means that term as defined in section 3 of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803.

(e) "Manufacturing jobs" are jobs for a company that has a classification under sector 33, subsector 321, or subsector 322 of the North American industrial classification system (NAICS).

(f) "Related entity" means an entity that meets any of the following criteria:

(i) More than 1% is owned by 1 of the following:

(A) Another entity.

(B) An entity that owns more than 1% of another entity.

(ii) It owns more than 1% of another entity.

(iii) It markets itself under a common name or trademark with any other entity or receives payroll, human resources, administrative, or other similar services from a company that provides those services to another entity.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor