

Act No. 231
Public Acts of 2005
Approved by the Governor
November 21, 2005
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NO EFFECTIVE DATE: Tie-barred to bill which was vetoed by the Governor

STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005

Introduced by Rep. Sheen

ENROLLED HOUSE BILL No. 5108

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," by amending sections 36 and 71 (MCL 208.36 and 208.71), section 36 as amended by 1995 PA 284 and section 71 as amended by 1999 PA 115, and by adding section 35f.

The People of the State of Michigan enact:

Sec. 35f. (1) A taxpayer that provides transferred jobs to this state may claim a credit against the tax imposed by this act equal to 100% of the property taxes paid on tangible personal property the use of which is directly related to the transferred jobs. The credit shall only be available for taxes paid the first year that the taxpayer pays property taxes on that property which shall be the same tax year in which the credit under this section based on those property taxes is claimed.

(2) Except as otherwise provided in subsection (3), the credit under subsection (1) can be claimed only for taxes paid in the 2007 or 2008 tax year.

(3) A taxpayer may claim a credit against the tax imposed by this act equal to 100% of the property taxes paid for the first year that the taxpayer pays property taxes on tangible personal property the use of which is directly related to the transferred jobs for the 2009 or 2010 tax year if the taxpayer enters into an agreement with the Michigan economic growth authority that states all of the following:

(a) The taxpayer will provide transferred jobs in this state in excess of the number of jobs the taxpayer maintained in this state in the immediately preceding tax year.

(b) The taxpayer will locate tangible personal property the use of which is directly related to those transferred jobs in this state.

(c) The transfer of the jobs and location of the tangible personal property cannot reasonably be completed by the taxpayer before January 1, 2007.

(4) The Michigan economic growth authority shall issue a certificate to the taxpayer certifying that the criteria under subsection (3) have been met, and the taxpayer shall attach the certificate to the annual return required under this act on which the credit under this section is claimed.

(5) If the taxpayer does not maintain the total number of transferred jobs located in this state for 3 years after the year in which a credit under this section was claimed, the following percentage of the credit amount previously claimed under this section shall be added back to the tax liability of the taxpayer in that year:

(a) If the total number of transferred jobs is less during the first year after the year in which the credit was claimed, 100%.

(b) If the total number of transferred jobs is less during the second year after the year in which the credit was claimed, 67%.

(c) If the total number of transferred jobs is less during the third year after the year in which the credit was claimed, 33%.

(6) Personal property taxes used to calculate a credit under this section shall not be used to calculate a credit under section 35d.

(7) The credit allowed under this section shall be calculated after application of all other credits allowed under this act.

(8) As used in this section:

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

(b) "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).

(c) "Property taxes" means any of the following:

(i) Taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(ii) Taxes levied under 1974 PA 198, MCL 207.551 to 207.572.

(iii) Taxes levied under the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.

(iv) Any payments made by the taxpayer pursuant to a contract with the Michigan strategic fund in connection with the creation of a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, to the extent that those payments are made by the taxpayer to reimburse all taxing units for property taxes that would otherwise be exempt under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff.

(d) "Transferred jobs" means jobs that meet all of the following criteria:

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

(ii) Were located in a different state or different country before being moved to 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 transferred job.

(v) The benefits for the employee in the transferred 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.

Sec. 36. (1) As used in this section:

(a) "Active shareholder" means a shareholder who receives at least \$10,000.00 in compensation, director's fees, or dividends from the business, and who owns at least 5% of the outstanding stock.

(b) "Officer" means an officer of a corporation other than a subchapter S corporation including the chairperson of the board, president, vice-president, secretary, and treasurer, or persons performing similar duties.

(c) “Adjusted business income” means business income as defined in section 3 with all of the following adjustments:

(i) Add compensation and director’s fees of active shareholders of a corporation.

(ii) Make the adjustments provided in section 9(4)(a) and (b).

(iii) Add compensation and director’s fees of officers of a corporation.

(d) “Shareholder” means a person who owns outstanding stock in the business or for tax years that begin on and after January 1, 2006 and for tax years for which section 35f is in effect, a member of a business entity that files as a corporation for federal tax purposes. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the internal revenue code.

(e) “Loss adjustment” means the amount by which adjusted business income was less than zero in any of the 5 tax years immediately preceding the tax year for which eligibility for the credit provided by this section is being determined. In determining the loss adjustment for a tax year, a taxpayer is not required to use more of the taxpayer’s total negative adjusted business income than the amount needed to qualify the taxpayer for the credit under this section. A taxpayer shall not be considered to have used any portion of the taxpayer’s negative adjusted business income amount unless the portion used is necessary to qualify for the credit under this section. A taxpayer shall not reuse a negative adjusted business income amount used as a loss adjustment in a previous tax year or use a negative adjusted business income amount from a year in which the taxpayer did not receive the credit under this section.

(f) “Subchapter S corporation” means a corporation electing taxation under subchapter S of chapter 1 of subtitle A of the internal revenue code, sections 1361 to 1379 of the internal revenue code.

(2) The credit provided in this section shall be taken before any other credit under this act, and is available to any person whose gross receipts do not exceed \$6,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$7,000,000.00 for tax years commencing in 1989; \$7,250,000.00 for tax years commencing in 1990; \$7,500,000.00 for tax years commencing in 1991; or \$10,000,000.00 for tax years commencing after 1991, and whose adjusted business income minus the loss adjustment does not exceed \$475,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 2006 and \$525,000.00 for tax years commencing on or after January 1, 2006, subject to the following:

(a) An individual, a partnership, or a subchapter S corporation is disqualified if the individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives more than \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998, more than \$115,000.00 for tax years commencing after December 31, 1997 and before January 1, 2006, or more than \$125,000.00 for tax years commencing after December 31, 2005 as a distributive share of the adjusted business income minus the loss adjustment of the individual, the partnership, or the subchapter S corporation.

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

(i) Compensation and director’s fees of a shareholder or officer exceed \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998, exceed \$115,000.00 for tax years commencing after December 31, 1997 and before January 1, 2006, or exceed \$125,000.00 for tax years commencing after December 31, 2005.

(ii) The sum of the following amounts exceeds \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998, exceeds \$115,000.00 for tax years commencing after December 31, 1997 and before January 1, 2006, or exceed \$125,000.00 for tax years commencing after December 31, 2005:

(A) Compensation and director’s fees of a shareholder.

(B) The product of the percentage of outstanding stock owned by that shareholder multiplied by the difference between the sum of business income and the adjustments provided in section 9(4)(a) and (b) minus the loss adjustment.

(c) Subject to section 36d, for a taxpayer that is eligible for the credit under this subsection for tax years beginning after December 31, 1997, the credit determined under this subsection shall be reduced by the following percentages in the following circumstances:

(i) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the individual, partnership, or subchapter S corporation; if compensation and directors’ fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is more than \$95,000.00 but less than \$100,000.00 for tax years that begin before January 1, 2006 or more than \$105,000.00 but less than \$110,000.00 for tax years that begin on and after January 1, 2006, the credit is reduced by 20%.

(ii) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the individual, partnership, or subchapter S corporation; if compensation and directors’ fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is \$100,000.00 or more but

less than \$105,000.00 for tax years that begin before January 1, 2006 or \$110,000.00 or more but less than \$115,000.00 for tax years that begin on and after January 1, 2006, the credit is reduced by 40%.

(iii) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the individual, partnership, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is \$105,000.00 or more but less than \$110,000.00 for tax years that begin before January 1, 2006 or \$115,000.00 or more but less than \$120,000.00 for tax years that begin on and after January 1, 2006, the credit is reduced by 60%.

(iv) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the individual, partnership, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is \$110,000.00 or more but less than \$115,000.00 for tax years that begin before January 1, 2006 or \$120,000.00 or more but less than or equal to \$125,000.00 for tax years that begin on and after January 1, 2006, the credit is reduced by 80%.

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

(4) A person who qualifies pursuant to subsection (2) is allowed a credit against the tax imposed by section 31. For tax years commencing before January 1, 1989, the credit is a percentage reduction in tax liability. The department shall annualize the rates provided under this subsection as necessary for tax years that end after September 30, 1994 and the applicable annualized rate shall be imposed for those tax years. The credit under this subsection is the greater of the amount by which the tax imposed by section 31 exceeds the following percentage of adjusted business income for the specified tax years or a percentage reduction in tax liability:

(a) For tax years commencing on and after January 1, 1989 and through tax years commencing in 1991, 4%.

(b) For tax years commencing after 1991 and before October 1, 1994, 3%.

(c) Beginning October 1, 1994 and before January 1, 2006, 2%.

(d) Beginning January 1, 2006, 1.9%.

(5) The percentage reduction provided in subsection (4) is calculated by subtracting from 100% the percentage computed by dividing adjusted business income by 45% of tax base.

(6) If gross receipts exceed \$5,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for tax years commencing in 1990; \$6,500,000.00 for tax years commencing in 1991; or \$9,000,000.00 for tax years commencing after 1991, the credit shall be reduced by a fraction, the numerator of which is the amount of gross receipts over \$5,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for tax years commencing in 1990; \$6,500,000.00 for tax years commencing in 1991; or \$9,000,000.00 for tax years commencing after 1991, and the denominator of which is \$1,000,000.00. The credit shall not exceed 50% for tax years commencing before January 1, 1984; 90% for tax years commencing on or after January 1, 1984 and before January 1, 1988; or 100% for tax years commencing on and after January 1, 1988 of the tax liability imposed by section 31.

(7) 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 not take the credit allowed by this section unless the business activities of the entities are consolidated. For purposes of this subsection and for tax years for which section 35f is in effect, business activities include all activities within and outside of this state.

(8) The department shall permit a taxpayer who elects to claim the credit allowed by this section based on the amount by which the tax imposed by section 31 exceeds the percentage of adjusted business income for the tax year as determined under subsection (4), and who is not required to reduce the credit pursuant to subsection (2) or (6), to file and pay the tax imposed by this act without computing the tax imposed under section 31.

(9) As used in this section, for tax years for which section 35f is in effect, the term "corporation" includes a business entity that files as a corporation for federal tax purposes.

Sec. 71. (1) A taxpayer that reasonably expects liability for the tax year to exceed \$600.00 or adjustments under section 23 to exceed \$100,000.00 shall file an estimated return and pay an estimated tax for each quarter of the taxpayer's tax year.

(2) For taxpayers on a calendar year basis the quarterly returns and estimated payments shall be made by April 30, July 31, October 31, and January 31. Taxpayers not on a calendar year basis shall file quarterly returns and make estimated payments on the appropriate due date which in the taxpayer's fiscal year corresponds to the calendar year.

(3) The estimated payment made with each quarterly return of each tax year shall be for the estimated tax base for the quarter or 25% of the estimated annual liability. The second, third, and fourth estimated payments in each tax year shall include adjustments, if necessary, to correct underpayments or overpayments from previous quarterly payments in the tax year to a revised estimate of the annual tax liability.

(4) The interest and penalty provided by this act shall not be assessed if any of the following occur:

(a) If the sum of the estimated payments equals at least 85% of the liability or 1% of the gross receipts for the tax year and the amount of each estimated payment reasonably approximates the tax liability incurred during the quarter for which the estimated payment was made.

(b) If the preceding year's tax liability was \$20,000.00 or less and if the taxpayer submitted 4 equal installments the sum of which equals the previous year's tax liability.

(c) Effective for the 1 tax year of the taxpayer during which the amendatory act that added this subdivision became effective, if the underpayment is due to the changes made to section 36 by the amendatory act that added this subdivision.

(5) Each estimated return shall be made on a form prescribed by the department and shall include an estimate of the annual tax liability and other information required by the commissioner. This form may be combined with any other tax reporting form prescribed by the department.

(6) With respect to a taxpayer filing an estimated tax return for the taxpayer's first tax year of less than 12 months, the amounts paid with each return shall be proportional to the number of payments made in the first tax year.

(7) Payments made under this section shall be a credit against the payment required with the annual tax return required in section 73.

(8) When the commissioner considers it necessary to insure payment of the tax or to provide a more efficient administration of the tax, the commissioner may require filing of the returns and payment of the tax for other than quarterly or annual periods.

(9) A taxpayer that elects under the internal revenue code to file an annual federal income tax return by March 1 in the year following the taxpayer's tax year and does not make a quarterly estimate or payment, or does not make a quarterly estimate or payment and files a tentative annual return with a tentative payment by January 15, in the year following the taxpayer's tax year and a final return by April 15 in the year following the taxpayer's tax year, shall have the same option in filing the estimated and annual returns required by this act.

(10) Instead of the quarterly return prescribed in subsections (1) and (2) the taxpayer may elect either of the following options:

(a) To file and pay before the sixteenth day of each month an estimated return computed at the rate of 1% of the gross receipts for the preceding month.

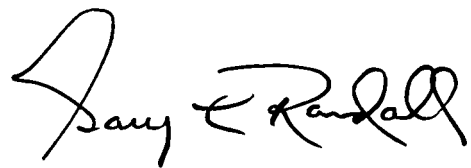
(b) To file and pay before the sixteenth day of the months specified in subsection (2) an estimated return computed at the rate of 1% of the gross receipts for the preceding quarter.

(11) A penalty for underpayment of an estimated tax under this act shall not be assessed for the taxpayer's first tax year beginning after December 31, 1999 if the taxpayer claimed a credit under section 35a for the first time on the taxpayer's annual return for that tax year and a penalty would not have applied if the taxpayer had made adjustments under section 23 or 23b on that return.

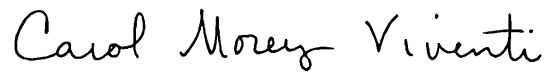
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) House Bill No. 4342.
- (b) House Bill No. 4972.
- (c) House Bill No. 4973.
- (d) House Bill No. 4980.
- (e) House Bill No. 5095.
- (f) House Bill No. 5096.
- (g) House Bill No. 5097.
- (h) House Bill No. 5098.
- (i) House Bill No. 5106.
- (j) House Bill No. 5107.
- (k) Senate Bill No. 633.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor