

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1052

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 109 and 403 (MCL 208.1109 and 208.1403),
section 403 as amended by 2007 PA 145, and by adding section 461.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 109. (1) "Employee" means an employee as defined in
2 section 3401(c) of the internal revenue code. A person from whom an
3 employer is required to withhold for federal income tax purposes is
4 prima facie considered an employee.

5 (2) "Employer" means an employer as defined in section 3401(d)
6 of the internal revenue code. A person required to withhold for
7 federal income tax purposes is prima facie considered an employer.

8 (3) "Federal taxable income" means taxable income as defined
9 in section 63 of the internal revenue code, **EXCEPT THAT FEDERAL**
10 **TAXABLE INCOME SHALL BE CALCULATED AS IF SECTION 168(K) AND SECTION**

1 199 OF THE INTERNAL REVENUE CODE WERE NOT IN EFFECT.

2 (4) "Financial institution" means that term as defined under
3 chapter 2B.

4 (5) "Foreign operating entity" means a United States person
5 that satisfies each of the following:

6 (a) Would otherwise be a part of a unitary business group that
7 has at least 1 person included in the unitary business group that
8 is taxable in this state.

9 (b) Has substantial operations outside the United States, the
10 District of Columbia, ~~the Commonwealth of Puerto Rico,~~ any
11 territory or possession of the United States **EXCEPT FOR THE**
12 **COMMONWEALTH OF PUERTO RICO**, or a political subdivision of any of
13 the foregoing.

14 (c) At least 80% of its income is active foreign business
15 income as defined in section 861(c)(1)(B) of the internal revenue
16 code.

17 Sec. 403. (1) Notwithstanding any other provision in this act,
18 the credits provided in this section shall be taken before any
19 other credit under this act. ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN**
20 **SUBSECTION (6), FOR** the 2008 tax year, the total combined credit
21 allowed under this section shall not exceed 50% of the tax
22 liability imposed under this act before the imposition and levy of
23 the surcharge under section 281. For the 2009 tax year and each tax
24 year after 2009, the total combined credit allowed under this
25 section shall not exceed 52% of the tax liability imposed under
26 this act before the imposition and levy of the surcharge under
27 section 281.

1 (2) Subject to the limitation in subsection (1), for the 2008
2 tax year a taxpayer may claim a credit against the tax imposed by
3 this act equal to 0.296% of the taxpayer's compensation in this
4 state. For the 2009 tax year and each tax year after 2009, subject
5 to the limitation in subsection (1), a taxpayer may claim a credit
6 against the tax imposed by this act equal to 0.370% of the
7 taxpayer's compensation in this state. For purposes of this
8 subsection, a taxpayer includes a person subject to the tax imposed
9 under chapter 2A and a person subject to the tax imposed under
10 chapter 2B. A professional employer organization shall not include
11 payments by the professional employer organization to the officers
12 and employees of a client of the professional employer organization
13 whose employment operations are managed by the professional
14 employer organization. A client may include payments by the
15 professional employer organization to the officers and employees of
16 the client whose employment operations are managed by the
17 professional employer organization.

18 (3) Subject to the limitation in subsection (1), for the 2008
19 tax year a taxpayer may claim a credit against the tax imposed by
20 this act equal to 2.32% multiplied by the result of subtracting the
21 sum of the amounts calculated under subdivisions (d), (e), and (f)
22 from the sum of the amounts calculated under subdivisions (a), (b),
23 and (c). Subject to the limitation in subsection (1), for the 2009
24 tax year and each tax year after 2009, a taxpayer may claim a
25 credit against the tax imposed by this act equal to 2.9% multiplied
26 by the result of subtracting the sum of the amounts calculated
27 under subdivisions (d), (e), and (f) from the sum of the amounts

1 calculated under subdivisions (a), (b), and (c):

2 (a) Calculate the cost, including fabrication and
3 installation, paid or accrued in the taxable year of tangible
4 assets of a type that are, or under the internal revenue code will
5 become, eligible for depreciation, amortization, or accelerated
6 capital cost recovery for federal income tax purposes, provided
7 that the assets are physically located in this state for use in a
8 business activity in this state and are not mobile tangible assets.

9 (b) Calculate the cost, including fabrication and
10 installation, paid or accrued in the taxable year of mobile
11 tangible assets of a type that are, or under the internal revenue
12 code will become, eligible for depreciation, amortization, or
13 accelerated capital cost recovery for federal income tax purposes.
14 This amount shall be multiplied by the apportionment factor for the
15 tax year as prescribed in chapter 3.

16 (c) For tangible assets, other than mobile tangible assets,
17 purchased or acquired for use outside of this state in a tax year
18 beginning after December 31, 2007 and subsequently transferred into
19 this state and purchased or acquired for use in a business
20 activity, calculate the federal basis used for determining gain or
21 loss as of the date the tangible assets were physically located in
22 this state for use in a business activity plus the cost of
23 fabrication and installation of the tangible assets in this state.

24 (d) If the cost of tangible assets described in subdivision
25 (a) was paid or accrued in a tax year beginning after December 31,
26 2007, or before December 31, 2007 to the extent the credit is used
27 and at the rate at which the credit was used under former 1975 PA

1 228 or this act, calculate the gross proceeds or benefit derived
2 from the sale or other disposition of the tangible assets minus the
3 gain, multiplied by the apportionment factor for the taxable year
4 as prescribed in chapter 3, and plus the loss, multiplied by the
5 apportionment factor for the taxable year as prescribed in chapter
6 3 from the sale or other disposition reflected in federal taxable
7 income and minus the gain from the sale or other disposition added
8 to the business income tax base in section 201.

9 (e) If the cost of tangible assets described in subdivision
10 (b) was paid or accrued in a tax year beginning after December 31,
11 2007, or before December 31, 2007 to the extent the credit is used
12 and at the rate at which the credit was used under former 1975 PA
13 228 or this act, calculate the gross proceeds or benefit derived
14 from the sale or other disposition of the tangible assets minus the
15 gain and plus the loss from the sale or other disposition reflected
16 in federal taxable income and minus the gain from the sale or other
17 disposition added to the business income tax base in section 201.
18 This amount shall be multiplied by the apportionment factor for the
19 tax year as prescribed in chapter 3.

20 (f) For assets purchased or acquired in a tax year beginning
21 after December 31, 2007, or before December 31, 2007 to the extent
22 the credit is used and at the rate at which the credit was used
23 under former 1975 PA 228 or this act, that were eligible for a
24 credit under subdivision (a) or (c) and that were transferred out
25 of this state, calculate the federal basis used for determining
26 gain or loss as of the date of the transfer.

27 (4) For a tax year in which the amount of the credit

1 calculated under subsection (3) is negative, the absolute value of
2 that amount is added to the taxpayer's tax liability for the tax
3 year.

4 (5) A taxpayer that claims a credit under this section is not
5 prohibited from claiming a credit under section 405. However, the
6 taxpayer shall not claim a credit under this section and section
7 405 based on the same costs and expenses.

8 (6) FOR A TAXPAYER PRIMARILY ENGAGED IN FURNISHING ELECTRIC
9 AND GAS UTILITY SERVICE THAT MAKES CAPITAL INVESTMENTS IN ELECTRIC
10 AND GAS DISTRIBUTION ASSETS FOR WHICH A PORTION OF THE CREDIT
11 PROVIDED UNDER SUBSECTION (3) WOULD BE DENIED FOR THE 2008 TAX YEAR
12 BY REASON OF THE 50% LIMITATION OF SUBSECTION (1), THE 50%
13 LIMITATION ON THE TOTAL COMBINED CREDIT FOR THE 2008 TAX YEAR
14 PROVIDED IN SUBSECTION (1) SHALL BE INCREASED BY AN AMOUNT NOT TO
15 EXCEED THE LESSER OF THE AMOUNT OF THE DENIED CREDIT OR 50% OF THE
16 TAX LOSS UNDER THIS ACT DUE TO THE ELIMINATION OF THE DEDUCTION
17 UNDER SECTION 168(F) OF THE INTERNAL REVENUE CODE BY THE AMENDATORY
18 ACT THAT ADDED THIS SUBSECTION. PROVIDED, HOWEVER, THAT THE TOTAL
19 COMBINED CREDIT ALLOWED UNDER THIS SECTION FOR THE 2008 TAX YEAR
20 SHALL NOT EXCEED 80% OF THE TAX LIABILITY IMPOSED UNDER THIS ACT
21 AFTER THE IMPOSITION AND LEVY OF THE SURCHARGE UNDER SECTION 281.

22 SEC. 461. FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 2008 AND
23 ENDING BEFORE JANUARY 1, 2011, A TAXPAYER OTHER THAN A REGULATED
24 UTILITY MAY CLAIM A CREDIT UNDER THIS ACT EQUAL TO 0.42% OF THE
25 AMOUNT OF THE DEDUCTION CLAIMED FOR THE 2008 TAX YEAR FOR BONUS
26 DEPRECIATION UNDER SECTION 168(K) OF THE INTERNAL REVENUE CODE
27 APPORTIONED AS THE TAX BASE IS APPORTIONED UNDER THIS ACT. IF THE

1 AMOUNT OF THE CREDIT EXCEEDS THE LIABILITY OF THE TAXPAYER, THE
2 EXCESS SHALL NOT BE REFUNDED BUT MAY BE CARRIED FORWARD FOR 10
3 YEARS OR UNTIL USED UP, WHICHEVER OCCURS FIRST.

4 Enacting section 1. This amendatory act is retroactive and is
5 effective January 1, 2008.

6 Enacting section 2. This amendatory act does not take effect
7 unless Senate Bill No. 1038 of the 94th Legislature is enacted into
8 law.