

HOUSE BILL No. 5405

October 31, 2007, Introduced by Rep. Gillard and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 417 (MCL 208.1417).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 417. (1) The credit provided ~~in~~**UNDER** this section shall
2 be taken after the credits under sections 403 and 405 and before
3 any other credit under this act and is available to any taxpayer
4 with gross receipts that do not exceed \$20,000,000.00 and with
5 adjusted business income minus the loss adjustment that does not
6 exceed \$1,300,000.00 as adjusted annually for inflation using the
7 Detroit consumer price index and subject to the following:

8 (a) An individual, a partnership, **A LIMITED PARTNERSHIP**, a
9 limited liability company, or a subchapter S corporation is
10 disqualified if the individual, any 1 partner of the partnership,

1 **ANY 1 PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the
2 limited liability company, or any 1 shareholder of the subchapter S
3 corporation receives more than \$180,000.00 as a distributive share
4 of the adjusted business income minus the loss adjustment of the
5 individual, the partnership, **THE LIMITED PARTNERSHIP**, the limited
6 liability company, or the subchapter S corporation.

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

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

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

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

14 (B) The product of the percentage of outstanding ownership or
15 of outstanding stock owned by that shareholder multiplied by the
16 difference between the sum of business income and, to the extent
17 deducted in determining federal taxable income, a carryback or a
18 carryover of a net operating loss or capital loss, minus the loss
19 adjustment.

20 (c) Subject to the reduction percentage determined under
21 subsection (3), the credit determined under this subsection shall
22 be reduced by the following percentages in the following
23 circumstances:

24 (i) If an individual, any 1 partner of the partnership, **ANY 1**
25 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
26 liability company, or any 1 shareholder of the subchapter S
27 corporation receives as a distributive share of adjusted business

1 income minus the loss adjustment of the individual, partnership,
2 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
3 corporation; if compensation and directors' fees of a shareholder
4 or officer of a corporation other than a subchapter S corporation
5 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
6 is more than \$160,000.00 but less than \$165,000.00, the credit is
7 reduced by 20%.

8 (ii) If an individual, any 1 partner of the partnership, **ANY 1**
9 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
10 liability company, or any 1 shareholder of the subchapter S
11 corporation receives as a distributive share of adjusted business
12 income minus the loss adjustment of the individual, partnership,
13 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
14 corporation; if compensation and directors' fees of a shareholder
15 or officer of a corporation other than a subchapter S corporation
16 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
17 is \$165,000.00 or more but less than \$170,000.00, the credit is
18 reduced by 40%.

19 (iii) If an individual, any 1 partner of the partnership, **ANY 1**
20 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
21 liability company, or any 1 shareholder of the subchapter S
22 corporation receives as a distributive share of adjusted business
23 income minus the loss adjustment of the individual, partnership,
24 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
25 corporation; if compensation and directors' fees of a shareholder
26 or officer of a corporation other than a subchapter S corporation
27 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)

1 is \$170,000.00 or more but less than \$175,000.00, the credit is
2 reduced by 60%.

3 (iv) If an individual, any 1 partner of the partnership, **ANY 1**
4 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
5 liability company, or any 1 shareholder of the subchapter S
6 corporation receives as a distributive share of adjusted business
7 income minus the loss adjustment of the individual, partnership,
8 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
9 corporation; if compensation and directors' fees of a shareholder
10 or officer of a corporation other than a subchapter S corporation
11 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
12 is \$175,000.00 or more but not in excess of \$180,000.00, the credit
13 is reduced by 80%.

14 (2) For the purposes of determining disqualification under
15 subsection (1), an active shareholder's share of business income
16 shall not be attributed to another active shareholder.

17 (3) To determine the reduction percentage under subsection
18 (1) (c), the following apply:

19 (a) The reduction percentage for a partnership, **LIMITED**
20 **PARTNERSHIP**, limited liability company, or subchapter S corporation
21 is based on the distributive share of adjusted business income
22 minus loss adjustment of the partner, **LIMITED PARTNER**, member, or
23 shareholder with the greatest distributive share of adjusted
24 business income minus loss adjustment.

25 (b) The reduction percentage for a corporation other than a
26 subchapter S corporation is the greater of the following:

27 (i) The reduction percentage based on the compensation and

1 directors' fees of the shareholder or officer with the greatest
2 amount of compensation and directors' fees.

3 (ii) The reduction percentage based on the sum of the amounts
4 in subsection (1)(b)(ii)(A) and (B) for the shareholder or officer
5 with the greatest sum of the amounts in subsection (1)(b)(ii)(A) and
6 (B).

7 (4) A taxpayer that qualifies under subsection (1) is allowed
8 a credit against the tax imposed under this act. The credit under
9 this subsection is the amount by which the tax imposed under this
10 act exceeds 1.8% of adjusted business income.

11 (5) If gross receipts exceed \$19,000,000.00, the credit shall
12 be reduced by a fraction, the numerator of which is the amount of
13 gross receipts over \$19,000,000.00 and the denominator of which is
14 \$1,000,000.00. The credit shall not exceed 100% of the tax
15 liability imposed under this act.

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

21 (7) The department shall permit a taxpayer that elects to
22 claim the credit allowed under this section based on the amount by
23 which the tax imposed under this act exceeds the percentage of
24 adjusted business income for the tax year as determined under
25 subsection (4), and that is not required to reduce the credit
26 pursuant to subsection (1) or (5), to file and pay the tax imposed
27 by this act without computing ~~the~~ a tax imposed under sections 201

1 and 203.

2 (8) Compensation paid by the professional employer
3 organization to the officers of the client and to employees of the
4 professional employer organization who are assigned or leased to
5 and perform services for the client shall be included in
6 determining eligibility of the client under this section.

7 (9) As used in this section:

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

12 (b) "Adjusted business income" means business income as
13 defined in section 105 with all of the following adjustments:

14 (i) Add compensation and directors' fees of active shareholders
15 of a corporation.

16 (ii) Add, to the extent deducted in determining federal taxable
17 income, a carryback or a carryover of a net operating loss.

18 (iii) Add, to the extent deducted in determining federal taxable
19 income, a capital loss.

20 (iv) Add compensation and directors' fees of officers of a
21 corporation.

22 (c) "Detroit consumer price index" means the most
23 comprehensive index of consumer prices available for the Detroit
24 area from the United States department of labor, bureau of labor
25 statistics.

26 (d) "Loss adjustment" means the amount by which adjusted
27 business income was less than zero in any of the 5 tax years

1 immediately preceding the tax year for which eligibility for the
2 credit under this section is being determined. In determining the
3 loss adjustment for a tax year, a taxpayer is not required to use
4 more of the taxpayer's total negative adjusted business income than
5 the amount needed to qualify the taxpayer for the credit under this
6 section. A taxpayer shall not be considered to have used any
7 portion of the taxpayer's negative adjusted business income amount
8 unless the portion used is necessary to qualify for the credit
9 under this section. A taxpayer shall not reuse a negative adjusted
10 business income amount used as a loss adjustment in a previous tax
11 year or use a negative adjusted business income amount from a year
12 in which the taxpayer did not receive the credit under this
13 section.

14 Enacting section 1. This amendatory act takes effect January
15 1, 2008 and applies to all business activity occurring after
16 December 31, 2007.

17 Enacting section 2. This amendatory act does not take effect
18 unless all of the following bills of the 94th Legislature are
19 enacted into law:

20 (a) Senate Bill No.____ or House Bill No. 5401(request no.
21 05498'07 *).

22 (b) Senate Bill No.____ or House Bill No. 5402(request no.
23 05499'07 *).

24 (c) Senate Bill No.____ or House Bill No. 5403(request no.
25 05500'07 *).

26 (d) Senate Bill No.____ or House Bill No. 5404(request no.
27 05501'07 *).

1 (e) Senate Bill No. _____ or House Bill No. 5406 (request no.
2 05503'07 *).