

HOUSE BILL No. 6473

September 18, 2008, Introduced by Reps. Meltzer, Sheen, Wenke, Robertson, Elsenheimer, Agema, Palmer, Steil and Pastor 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 this section shall be
2 taken after the ~~credits~~ **CREDIT** under ~~sections 403 and~~ **SECTION** 405
3 and before any other credit under this act and is available to any
4 taxpayer with gross receipts that do not exceed \$20,000,000.00 and
5 with adjusted business income minus the loss adjustment that does
6 not exceed \$1,300,000.00 as adjusted annually for inflation using
7 the Detroit consumer price index and subject to the following:

8 (a) An individual, a partnership, a limited liability company,
9 or a subchapter S corporation is disqualified if the individual,

1 any 1 partner of the partnership, any 1 member of the limited
2 liability company, or any 1 shareholder of the subchapter S
3 corporation receives more than ~~\$180,000.00~~ **\$250,000.00 AS ADJUSTED**
4 **ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX** as a
5 distributive share of the adjusted business income minus the loss
6 adjustment of the individual, the partnership, the limited
7 liability company, or the subchapter S corporation.

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

11 (i) Compensation and directors' fees of a shareholder or
12 officer exceed ~~\$180,000.00~~ **\$250,000.00 AS ADJUSTED ANNUALLY FOR**
13 **INFLATION USING THE DETROIT CONSUMER PRICE INDEX.**

14 (ii) The sum of the following amounts exceeds ~~\$180,000.00~~
15 **\$250,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT**
16 **CONSUMER PRICE INDEX:**

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

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

24 (c) Subject to the reduction percentage determined under
25 subsection (3), the credit determined under this subsection shall
26 be reduced by the following percentages in the following
27 circumstances:

1 (i) If an individual, any 1 partner of the partnership, any 1
2 member of the limited liability company, or any 1 shareholder of
3 the subchapter S corporation receives as a distributive share of
4 adjusted business income minus the loss adjustment of the
5 individual, partnership, limited liability company, or subchapter S
6 corporation; if compensation and directors' fees of a shareholder
7 or officer of a corporation other than a subchapter S corporation
8 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
9 is more than ~~\$160,000.00~~ **\$230,000.00 AS ADJUSTED ANNUALLY FOR**
10 **INFLATION USING THE DETROIT CONSUMER PRICE INDEX** but less than
11 ~~\$165,000.00~~ **\$235,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING**
12 **THE DETROIT CONSUMER PRICE INDEX**, the credit is reduced by 20%.

13 (ii) If an individual, any 1 partner of the partnership, any 1
14 member of the limited liability company, or any 1 shareholder of
15 the subchapter S corporation receives as a distributive share of
16 adjusted business income minus the loss adjustment of the
17 individual, partnership, limited liability company, or subchapter S
18 corporation; if compensation and directors' fees of a shareholder
19 or officer of a corporation other than a subchapter S corporation
20 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
21 is ~~\$165,000.00~~ **\$235,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING**
22 **THE DETROIT CONSUMER PRICE INDEX** or more but less than ~~\$170,000.00~~
23 **\$240,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT**
24 **CONSUMER PRICE INDEX**, the credit is reduced by 40%.

25 (iii) If an individual, any 1 partner of the partnership, any 1
26 member of the limited liability company, or any 1 shareholder of
27 the subchapter S corporation receives as a distributive share of

1 adjusted business income minus the loss adjustment of the
2 individual, 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 ~~\$170,000.00~~ **\$240,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING**
7 **THE DETROIT CONSUMER PRICE INDEX** or more but less than ~~\$175,000.00~~
8 **\$245,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT**
9 **CONSUMER PRICE INDEX**, the credit is reduced by 60%.

10 (iv) If an individual, any 1 partner of the partnership, any 1
11 member of the limited liability company, or any 1 shareholder of
12 the subchapter S corporation receives as a distributive share of
13 adjusted business income minus the loss adjustment of the
14 individual, partnership, limited liability company, or subchapter S
15 corporation; if compensation and directors' fees of a shareholder
16 or officer of a corporation other than a subchapter S corporation
17 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
18 is ~~\$175,000.00~~ **\$245,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING**
19 **THE DETROIT CONSUMER PRICE INDEX** or more but not in excess of
20 ~~\$180,000.00~~ **\$250,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING**
21 **THE DETROIT CONSUMER PRICE INDEX**, the credit is reduced by 80%.

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

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

27 (a) The reduction percentage for a partnership, limited

1 liability company, or subchapter S corporation is based on the
2 distributive share of adjusted business income minus loss
3 adjustment of the partner, member, or shareholder with the greatest
4 distributive share of adjusted business income minus loss
5 adjustment.

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

8 (i) The reduction percentage based on the compensation and
9 directors' fees of the shareholder or officer with the greatest
10 amount of compensation and directors' fees.

11 (ii) The reduction percentage based on the sum of the amounts
12 in subsection (1)(b)(ii)(A) and (B) for the shareholder or officer
13 with the greatest sum of the amounts in subsection (1)(b)(ii)(A) and
14 (B).

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

19 (5) If gross receipts exceed \$19,000,000.00, the credit shall
20 be reduced by a fraction, the numerator of which is the amount of
21 gross receipts over \$19,000,000.00 and the denominator of which is
22 \$1,000,000.00. The credit shall not exceed 100% of the tax
23 liability imposed under this act.

24 (6) For a taxpayer that reports for a tax year less than 12
25 months, the amounts specified in this section for gross receipts,
26 adjusted business income, and share of business income shall be
27 multiplied by a fraction, the numerator of which is the number of

1 months in the tax year and the denominator of which is 12.

2 (7) The department shall permit a taxpayer that elects to
3 claim the credit allowed under this section based on the amount by
4 which the tax imposed under this act exceeds the percentage of
5 adjusted business income for the tax year as determined under
6 subsection (4), and that is not required to reduce the credit
7 pursuant to subsection (1) or (5), to file and pay the tax imposed
8 by this act without computing the tax imposed under sections 201
9 and 203.

10 (8) Compensation paid by the professional employer
11 organization to the officers of the client and to employees of the
12 professional employer organization who are assigned or leased to
13 and perform services for the client shall be included in
14 determining eligibility of the client under this section.

15 (9) As used in this section:

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

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

22 (i) Add compensation and directors' fees of active shareholders
23 of a corporation.

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

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

1 (iv) Add compensation and directors' fees of officers of a
2 corporation.

3 (c) "Detroit consumer price index" means the most
4 comprehensive index of consumer prices available for the Detroit
5 area from the United States department of labor, bureau of labor
6 statistics.

7 (d) "Loss adjustment" means the amount by which adjusted
8 business income was less than zero in any of the 5 tax years
9 immediately preceding the tax year for which eligibility for the
10 credit under this section is being determined. In determining the
11 loss adjustment for a tax year, a taxpayer is not required to use
12 more of the taxpayer's total negative adjusted business income than
13 the amount needed to qualify the taxpayer for the credit under this
14 section. A taxpayer shall not be considered to have used any
15 portion of the taxpayer's negative adjusted business income amount
16 unless the portion used is necessary to qualify for the credit
17 under this section. A taxpayer shall not reuse a negative adjusted
18 business income amount used as a loss adjustment in a previous tax
19 year or use a negative adjusted business income amount from a year
20 in which the taxpayer did not receive the credit under this
21 section.

22 Enacting section 1. This amendatory act is effective January
23 1, 2009 and applies to taxes levied after December 31, 2008.