

HOUSE BILL No. 4126

January 27, 2009, Introduced by Rep. LeBlanc and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending the title and sections 201, 403, 405, 451, and 601 (MCL
208.1201, 208.1403, 208.1405, 208.1451, and 208.1601), the title
and sections 405 and 601 as amended and section 451 as added by
2007 PA 145, section 201 as amended by 2008 PA 168, and section 403
as amended by 2008 PA 434; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to ~~meet deficiencies in state funds by providing~~

3

PROVIDE for the imposition, levy, computation, collection,

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assessment, reporting, payment, and enforcement of taxes on certain

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commercial, business, and financial activities; to prescribe the

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powers and duties of public officers and state departments; to

1 provide for the inspection of certain taxpayer records; to provide
2 for interest and penalties; to provide exemptions, credits, and
3 refunds; to provide for the disposition of funds; to provide for
4 the interrelation of this act with other acts; and to make
5 appropriations.

6 Sec. 201. (1) Except as otherwise provided in this act, there
7 is levied and imposed a business income tax on every taxpayer with
8 business activity within this state unless prohibited by 15 USC 381
9 to 384. The business income tax is imposed on the business income
10 tax base, after allocation or apportionment to this state, at the
11 rate of 4.95%.

12 (2) The business income tax base means a taxpayer's business
13 income subject to the following adjustments, before allocation or
14 apportionment, and the adjustments in subsections (5), (6), and (7)
15 after allocation or apportionment:

16 (a) Add interest income and dividends derived from obligations
17 or securities of states other than this state, in the same amount
18 that was excluded from federal taxable income, less the related
19 portion of expenses not deducted in computing federal taxable
20 income because of sections 265 and 291 of the internal revenue
21 code.

22 (b) Add all taxes on or measured by net income and the tax
23 imposed under this act to the extent the taxes were deducted in
24 arriving at federal taxable income.

25 (c) Add any carryback or carryover of a net operating loss to
26 the extent deducted in arriving at federal taxable income.

27 (d) To the extent included in federal taxable income, deduct

1 dividends and royalties received from persons other than United
2 States persons and foreign operating entities, including, but not
3 limited to, amounts determined under section 78 of the internal
4 revenue code or sections 951 to 964 of the internal revenue code.

5 (e) To the extent included in federal taxable income, add the
6 loss or subtract the income from the business income tax base that
7 is attributable to another entity whose business activities are
8 taxable under this section or would be subject to the tax under
9 this section if the business activities were in this state.

10 (f) Except as otherwise provided under this subdivision, to
11 the extent deducted in arriving at federal taxable income, add any
12 royalty, interest, or other expense paid to a person related to the
13 taxpayer by ownership or control for the use of an intangible asset
14 if the person is not included in the taxpayer's unitary business
15 group. The addition of any royalty, interest, or other expense
16 described under this subdivision is not required to be added if the
17 taxpayer can demonstrate that the transaction has a nontax business
18 purpose other than avoidance of this tax, is conducted with arm's-
19 length pricing and rates and terms as applied in accordance with
20 sections 482 and 1274(d) of the internal revenue code, and
21 satisfies 1 of the following:

22 (i) Is a pass through of another transaction between a third
23 party and the related person with comparable rates and terms.

24 (ii) Results in double taxation. For purposes of this
25 subparagraph, double taxation exists if the transaction is subject
26 to tax in another jurisdiction.

27 (iii) Is unreasonable as determined by the treasurer, and the

1 taxpayer agrees that the addition would be unreasonable based on
2 the taxpayer's facts and circumstances.

3 (g) To the extent included in federal taxable income, deduct
4 interest income derived from United States obligations.

5 (h) To the extent included in federal taxable income, deduct
6 any earnings that are net earnings from self-employment as defined
7 under section 1402 of the internal revenue code of the taxpayer or
8 a partner or limited liability company member of the taxpayer
9 except to the extent that those net earnings represent a reasonable
10 return on capital.

11 (i) Subject to the limitation provided under this subdivision,
12 if the book-tax differences for the first fiscal period ending
13 after July 12, 2007 result in a deferred liability for a person
14 subject to tax under this act, deduct the following percentages of
15 the total book-tax difference for each qualifying asset, for each
16 of the successive 15 tax years beginning with the 2015 tax year:

17 (i) For the 2015 through 2019 tax years, 4%.

18 (ii) For the 2020 through 2024 tax years, 6%.

19 (iii) For the 2025 through 2029 tax years, 10%.

20 (3) The deduction under subsection (2)(i) shall not exceed the
21 amount necessary to offset the net deferred tax liability of the
22 taxpayer as computed in accordance with generally accepted
23 accounting principles which would otherwise result from the
24 imposition of the business income tax under this section and the
25 modified gross receipts tax under section 203 if the deduction
26 provided under this subdivision were not allowed. ~~The deduction~~
27 ~~under subsection (2)(i) is intended to flow through and reduce the~~

~~surcharge imposed and levied under section 281.~~ For purposes of the calculation of the deduction under subsection (2)(i), a book-tax difference shall only be used once in the calculation of the deduction arising from the taxpayer's business income tax base under this section and once in the calculation of the deduction arising from the taxpayer's modified gross receipts tax base under section 203. The adjustment under subsection (2)(i) shall be calculated without regard to the federal effect of the deduction. If the adjustment under subsection (2)(i) is greater than the taxpayer's business income tax base, any adjustment that is unused may be carried forward and applied as an adjustment to the taxpayer's business income tax base before apportionment in future years. In order to claim this deduction, the department may require the taxpayer to report the amount of this deduction on a form as prescribed by the department that is to be filed on or after the date that the first quarterly return and estimated payment are due under this act. As used in subsection (2)(i) and this subsection:

(a) "Book-tax difference" means the difference, if any, between the person's qualifying asset's net book value shown on the person's books and records for the first fiscal period ending after July 12, 2007 and the qualifying asset's tax basis on that same date.

(b) "Qualifying asset" means any asset shown on the person's books and records for the first fiscal period ending after July 12, 2007, in accordance with generally accepted accounting principles.

(4) For purposes of subsections (2) and (3), the business income of a unitary business group is the sum of the business

1 income of each person, other than a foreign operating entity or a
2 person subject to the tax imposed under chapter 2A or 2B, included
3 in the unitary business group less any items of income and related
4 deductions arising from transactions including dividends between
5 persons included in the unitary business group.

6 (5) Deduct any available business loss incurred after December
7 31, 2007. As used in this subsection, "business loss" means a
8 negative business income taxable amount after allocation or
9 apportionment. The business loss shall be carried forward to the
10 year immediately succeeding the loss year as an offset to the
11 allocated or apportioned business income tax base, then
12 successively to the next 9 taxable years following the loss year or
13 until the loss is used up, whichever occurs first, but for not more
14 than 10 taxable years after the loss year.

15 (6) Deduct any gain from the sale of any residential rental
16 units in this state to a qualified affordable housing project that
17 enters an agreement to operate the residential rental units as rent
18 restricted units for a minimum of 15 years. If the qualified
19 affordable housing project does not agree to operate all of the
20 residential rental units as rent restricted units, the deduction
21 under this subsection is limited to an amount equal to the gain
22 from the sale multiplied by a fraction, the numerator of which is
23 the number of those residential rental units purchased that are to
24 be operated as a rent restricted unit and the denominator is the
25 number of all residential rental units purchased. In order to claim
26 this deduction, the department may require the taxpayer and the
27 qualified affordable housing project to report the amount of this

deduction on a form as prescribed by the department that is to be signed by both the taxpayer and the qualified affordable housing project and filed with the taxpayer's annual return. The department shall record a lien against the property subject to the operation agreement for the total amount of the deduction allowed under this subsection. The department shall notify the qualified affordable housing project of the maximum amount of the lien that the qualified affordable housing project may be liable for if the qualified affordable housing project fails to qualify and operate as provided in the operation agreement within 15 years after the purchase. The lien shall become payable in an amount as provided under this subsection to the state by the qualified affordable housing project if the qualified affordable housing project fails to qualify as a qualified affordable housing project and fails to operate all or some of the residential rental units as rent restricted units in accordance with the operation agreement entered upon the purchase of those units within 15 years after the deduction is claimed by a taxpayer under this subsection. An amount equal to the product of 100% of the amount of the deduction allowed under this subsection multiplied by a fraction, the numerator of which is the difference between 15 and the number of years the affordable housing project qualified and operated rent restricted units in accordance with the agreement and the denominator is 15, shall be added back to the tax liability of the qualified affordable housing project for the tax year that the qualified affordable housing project fails to comply with the agreement.

(7) Subject to the limitations provided in this subsection,

1 for a person that is a qualified affordable housing project, deduct
2 an amount equal to the product of that person's taxable income that
3 is attributable to residential rental units in this state owned by
4 the qualified affordable housing project multiplied by a fraction,
5 the numerator of which is the number of rent restricted units in
6 this state owned by that qualified affordable housing project and
7 the denominator of which is the number of all residential rental
8 units in this state owned by the qualified affordable housing
9 project. The amount of the deduction calculated under this
10 subsection shall be reduced by the amount of limited dividends or
11 other distributions made to the partners, members, or shareholders
12 of the qualified affordable housing project. Taxable income that is
13 attributable to residential rental units does not include income
14 received by the management, construction, or development company
15 for completion and operation of the project and those rental units.

16 (8) If a qualified affordable housing project no longer meets
17 the requirements of subsection (9)(b) or fails to operate those
18 residential rental units as rent restricted units in accordance
19 with the operation agreement and the requirements of subsection
20 (9)(c), the taxpayer is entitled to the deductions under
21 subsections (6) and (7) as long as the qualified affordable housing
22 project continues to offer some of the residential rental units
23 purchased as rent restricted units in accordance with the operation
24 agreement.

25 (9) For purposes of subsections (6), (7), and (8) and this
26 subsection:

27 (a) "Limited dividend housing association" means a limited

1 dividend housing association, corporation, or cooperative organized
2 and qualified pursuant to chapter 7 of the state housing
3 development authority act of 1966, 1966 PA 346, MCL 125.1491 to
4 125.1496.

5 (b) "Qualified affordable housing project" means a person that
6 is organized, qualified, and operated as a limited dividend housing
7 association that has a limitation on the amount of dividends or
8 other distributions that may be distributed to its owners in any
9 given year and has received funding, subsidies, grants, operating
10 support, or construction or permanent funding through 1 or more of
11 the following sources and programs:

12 (i) Mortgage or other financing provided by the Michigan state
13 housing development authority created in section 21 of the state
14 housing development authority act of 1966, 1966 PA 346, MCL
15 125.1421, the United States department of housing and urban
16 development, the United States department of agriculture for rural
17 housing service, the Michigan interfaith housing trust fund,
18 Michigan housing and community development fund, federal home loan
19 bank, housing commission loan, community development financial
20 institution, or mortgage or other funding or guaranteed by Fannie,
21 Ginnie, federal housing association, United States department of
22 agriculture, or federal home loan mortgage corporation.

23 (ii) A tax-exempt bond issued by a nonprofit organization,
24 local governmental unit, or other authority.

25 (iii) A payment in lieu of tax agreement or other tax abatement.

26 (iv) Funding from the state or a local governmental unit
27 through a HOME investments partnership program authorized under 42

1 USC 12741 to 12756.

2 (v) A grant or other funding from a federal home loan bank's
3 affordable housing program.

4 (vi) Financing or funding under the new markets tax credit
5 program under section 45D of the internal revenue code.

6 (vii) Financed in whole or in part under the United States
7 department of housing and urban development's hope VI program as
8 authorized by section 803 of the national affordable housing act,
9 42 USC 8012.

10 (viii) Financed in whole or in part under the United States
11 department of housing and urban development's section 202 program
12 authorized by section 202 of the national housing act, 12 USC
13 1701q.

14 (ix) Financing or funding under the low-income housing tax
15 credit program under section 42 of the internal revenue code.

16 (x) Financing or other subsidies from any new programs similar
17 to any of the above.

18 (c) "Rent restricted unit" means any residential rental unit's
19 rental income is restricted in accordance with section 42(g)(1) of
20 the internal revenue code as if it was a qualified low-income
21 housing project, or receives rental assistance in the form of HUD
22 section 8 subsidies or HUD housing assistance program subsidies, or
23 rental assistance from the United States department of agriculture
24 rural housing programs, or from any of the other programs described
25 under subdivision (b).

26 Sec. 403. (1) Notwithstanding any other provision in this act,
27 the credits provided in this section shall be taken before any

1 other credit under this act. Except as otherwise provided in
2 subsection (6), ~~for the 2008 tax year, the total combined credit~~
3 ~~allowed under this section shall not exceed 50% of the tax~~
4 ~~liability imposed under this act before the imposition and levy of~~
5 ~~the surcharge under section 281. For the 2009 tax year and each tax~~
6 ~~year after 2009, the total combined credit allowed under this~~
7 ~~section shall not exceed 52% 65% of the tax liability imposed under~~
8 ~~this act. before the imposition and levy of the surcharge under~~
9 ~~section 281.~~

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

27 (3) ~~Subject to the limitation in subsection (1), for the 2008~~

~~tax year a taxpayer may claim a credit against the tax imposed by this act equal to 2.32% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c).~~ Subject to the limitation in subsection (1), ~~for the 2009 tax year and each tax year after 2009,~~ a taxpayer may claim a credit against the tax imposed by this act equal to 2.9% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c):

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

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

(c) For tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 2007 and subsequently transferred into

1 this state and purchased or acquired for use in a business
2 activity, calculate the federal basis used for determining gain or
3 loss as of the date the tangible assets were physically located in
4 this state for use in a business activity plus the cost of
5 fabrication and installation of the tangible assets in this state.

6 (d) If the cost of tangible assets described in subdivision
7 (a) was paid or accrued in a tax year beginning after December 31,
8 2007, or before December 31, 2007 to the extent the credit is used
9 and at the rate at which the credit was used under former 1975 PA
10 228 or this act, calculate the gross proceeds or benefit derived
11 from the sale or other disposition of the tangible assets minus the
12 gain, multiplied by the apportionment factor for the taxable year
13 as prescribed in chapter 3, and plus the loss, multiplied by the
14 apportionment factor for the taxable year as prescribed in chapter
15 3 from the sale or other disposition reflected in federal taxable
16 income and minus the gain from the sale or other disposition added
17 to the business income tax base in section 201.

18 (e) If the cost of tangible assets described in subdivision
19 (b) was paid or accrued in a tax year beginning after December 31,
20 2007, or before December 31, 2007 to the extent the credit is used
21 and at the rate at which the credit was used under former 1975 PA
22 228 or this act, calculate the gross proceeds or benefit derived
23 from the sale or other disposition of the tangible assets minus the
24 gain and plus the loss from the sale or other disposition reflected
25 in federal taxable income and minus the gain from the sale or other
26 disposition added to the business income tax base in section 201.
27 This amount shall be multiplied by the apportionment factor for the

1 tax year as prescribed in chapter 3.

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

9 (4) For a tax year in which the amount of the credit
10 calculated under subsection (3) is negative, the absolute value of
11 that amount is added to the taxpayer's tax liability for the tax
12 year.

13 (5) A taxpayer that claims a credit under this section is not
14 prohibited from claiming a credit under section 405. However, the
15 taxpayer shall not claim a credit under this section and section
16 405 based on the same costs and expenses.

17 (6) For a taxpayer primarily engaged in furnishing electric
18 and gas utility service that makes capital investments in electric
19 and gas distribution assets for which a portion of the credit
20 provided under subsection (3) would be denied for the 2008 tax year
21 by reason of the 50% limitation of subsection (1), the 50%
22 limitation on the total combined credit for the 2008 tax year
23 provided in subsection (1) shall be increased by an amount not to
24 exceed the lesser of the amount of the denied credit or 50% of the
25 tax increase under this act accrued for financial reporting
26 purposes due to the elimination of the deduction under section
27 168(k) of the internal revenue code by ~~the amendatory act that~~

~~added this subsection. Provided, however, that the total combined credit allowed under this section for the 2008 tax year shall not exceed 80% of the tax liability imposed under this act after the imposition and levy of the surcharge under section 281~~ **2008 PA 434.**

Sec. 405. ~~For the 2008 tax year, a taxpayer may claim a credit against the tax imposed by this act equal to 1.52% of the taxpayer's research and development expenses in this state in the tax year. For the 2009 tax year and each tax year after 2009, a~~ **A** taxpayer may claim a credit against the tax imposed by this act equal to 1.90% of the taxpayer's research and development expenses in this state in the tax year. The credit under this section combined with the total combined credit allowed under section 403 shall not exceed ~~65%~~ **75%** of the **TOTAL** tax liability imposed under this act. ~~before the imposition and levy of the surcharge under section 281.~~ As used in this section, "research and development expenses" means that term as defined in section 41(b) of the internal revenue code.

Sec. 451. (1) An eligible taxpayer may claim a credit against the tax imposed by this act equal to ~~the following:~~

~~—— (a) If a surcharge is imposed and levied under section 281 for the same tax year for which the credit is claimed under this section, 30.5% of the taxpayer's expenses incurred during the tax year to comply with 1976 IL 1, MCL 445.571 to 445.576.~~

~~—— (b) If a surcharge is not imposed and levied under section 281 for the same tax year for which the credit is claimed under this section, 25% of the taxpayer's expenses incurred during the tax year to comply with 1976 IL 1, MCL 445.571 to 445.576.~~

(2) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall not be refunded and shall not be carried forward as an offset to the tax liability in subsequent tax years.

(3) As used in this section:

(a) "Beverage container" and "distributor" mean those terms as defined under 1976 IL 1, MCL 445.571 to 445.576.

(b) "Eligible taxpayer" means a distributor or manufacturer who originates a deposit on a beverage container in accordance with 1976 IL 1, MCL 445.571 to 445.576.

Sec. 601. (1) For the 2008 fiscal year, except as otherwise provided under subsection (4), if total net cash payments from the tax imposed under this act plus any net cash payments from former 1975 PA 228 less any net cash payments made by insurance companies under either act exceed ~~the fiscal year 2008 base~~ **\$2,398,000,000.00**, 60% of that excess shall be refunded in the immediately succeeding fiscal year as provided in subsection (5) and the remaining 40% shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351. ~~To calculate the fiscal year 2008 base, multiply \$2,619,100,000.00 by 1.0075 and then multiply this product by the United States consumer price index for fiscal year 2008 and then divide this product by the United States consumer price index for fiscal year 2007.~~

(2) For the 2009 fiscal year, except as otherwise provided under subsection (4), if total net cash payments from the tax imposed under this act, excluding any revenue collected pursuant to

chapter 2A, exceed the fiscal year 2009 base, 60% of that excess shall be refunded in the immediately succeeding fiscal year as provided in subsection (5) and the remaining 40% shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351. To calculate the fiscal year 2009 base, multiply ~~\$3,051,500,000.00 by 1.015 and then multiply this product by the United States consumer price index for fiscal year 2009 and then divide this product by the United States consumer price index for fiscal year 2007~~ **\$2,398,000,000.00 BY 1.01 AND THEN MULTIPLY THIS PRODUCT BY 2009 FISCAL YEAR MICHIGAN PERSONAL INCOME DIVIDED BY 2008 FISCAL YEAR MICHIGAN PERSONAL INCOME.**

(3) For the 2010 fiscal year and each fiscal year after 2010, except as otherwise provided under subsection (4), if total net cash payments from the tax imposed under this act, excluding any revenue collected pursuant to chapter 2A, exceed the fiscal year base, 60% of that excess shall be refunded in the immediately succeeding fiscal year as provided in subsection (5) and the remaining 40% shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351. To calculate the **2010** fiscal year base, multiply ~~the fiscal year base for the immediately preceding fiscal year by 1.0075 and then multiply this product by the United States consumer price index for the fiscal year and divide this product by the United States consumer price index for the immediately preceding fiscal year~~ **\$2,398,000,000.00 BY 1.0201 AND THEN MULTIPLY THIS PRODUCT BY 2010 FISCAL YEAR**

1 PERSONAL INCOME DIVIDED BY 2008 FISCAL YEAR MICHIGAN PERSONAL
 2 INCOME. TO CALCULATE THE FISCAL YEAR BASE FOR EACH FISCAL YEAR
 3 AFTER 2010, MULTIPLY THE FISCAL YEAR BASE FOR THE IMMEDIATELY
 4 PRECEDING FISCAL YEAR BY 1.01 AND THEN BY A FRACTION THE NUMERATOR
 5 OF WHICH IS FISCAL YEAR PERSONAL INCOME FOR THE FISCAL YEAR FOR
 6 WHICH THE CALCULATION IS BEING PERFORMED AND THE DENOMINATOR OF
 7 WHICH IS FISCAL YEAR PERSONAL INCOME FOR THE FISCAL YEAR PRECEDING
 8 THE FISCAL YEAR FOR WHICH THE CALCULATION IS BEING PERFORMED.

9 (4) If the amount of the total net cash payments collected
 10 from the tax imposed under this act, excluding any revenue
 11 collected pursuant to chapter 2A, exceeds the amount described in
 12 the applicable subsection by less than \$5,000,000.00, then all of
 13 that excess shall be deposited into the countercyclical budget and
 14 economic stabilization fund created in section 351 of the
 15 management and budget act, 1984 PA 431, MCL 18.1351.

16 (5) ~~For the 2008 fiscal year, the~~ **THE** refund available under
 17 ~~subsection (1)~~ **SUBSECTIONS (1), (2), AND (3)** shall be applied pro
 18 rata to the taxpayers that made positive net cash payments during
 19 the fiscal year. The taxpayer's pro rata share shall be the total
 20 amount to be refunded under subsection (1), (2), OR (3) multiplied
 21 by a fraction the numerator of which is the positive net payments
 22 made by the taxpayer during the fiscal year and the denominator of
 23 which is the sum of the positive net cash payments made by all
 24 taxpayers during the fiscal year. ~~For each fiscal year after the~~
 25 ~~2008 fiscal year, the refund available under subsection (2) or (3)~~
 26 ~~shall be applied pro rata to the taxpayers that claimed 1 or more~~
 27 ~~credits under section 403 or 405 during the immediately preceding~~

~~fiscal year. The taxpayer's pro rata share shall be the total amount to be refunded under subsection (2) or (3) multiplied by a fraction the numerator of which is the credits claimed under sections 403 and 405 by the taxpayer during the immediately preceding fiscal year and the denominator of which is the sum of the credits claimed under sections 403 and 405 by all taxpayers during the immediately preceding fiscal year.~~

(6) As used in this section:

(a) "Fiscal year" means the state fiscal year that commences October 1 and continues through September 30.

(B) "FISCAL YEAR MICHIGAN PERSONAL INCOME" MEANS THE AVERAGE OF THE 4 QUARTERLY VALUES FOR THE FISCAL YEAR, AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF COMMERCE BUREAU OF ECONOMIC ANALYSIS. FISCAL YEAR PERSONAL INCOME IS CALCULATED USING THE PERSONAL INCOME TOTALS PUBLISHED IN THE DECEMBER IMMEDIATELY FOLLOWING THE END OF THE FISCAL YEAR.

(C) ~~(b)~~ "Net cash payments" for the fiscal year are equal to cash annual and estimated payments made during the fiscal year less refunds paid during the fiscal year. Refunds paid under this section are not used to reduce net cash payments for purposes of calculating refunds paid out under this section.

~~—— (c) "United States consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics.~~

Enacting section 1. Section 281 of Michigan business tax act, 2007 PA 36, MCL 208.1281, is repealed effective January 1, 2008.

1 Enacting section 2. This amendatory act is retroactive and
2 effective January 1, 2008.